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Contents

Federal Register

Vol. 72, No. 198

Monday, October 15, 2007

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
8189.....58467

5 CFR
894.....58243
Proposed Rules:
630.....58263

9 CFR
93.....58375
94.....58375
95.....58375
96.....58375

12 CFR
711.....58248

14 CFR
Proposed Rules:
39.....58267

24 CFR
Proposed Rules:
5.....58448

26 CFR
1.....58375
602.....58375

29 CFR
4022.....58249
4044.....58249

33 CFR
117.....58250

39 CFR
601.....58251

40 CFR
Proposed Rules:
112.....58378

49 CFR
Proposed Rules:
541.....58268

50 CFR
20.....58452
660.....58258
665.....58259
679.....58261
Proposed Rules:
92.....58274
216.....58279
648.....58280

Rules and Regulations

Federal Register
Vol. 72, No. 198
Monday, October 15, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 894

RIN 3206–AL03

Federal Employees Dental and Vision Insurance Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to administer the Federal Employee Dental and Vision Benefits Enhancement Act of 2004, which was enacted December 23, 2004. This law establishes dental and vision benefits programs for Federal employees, annuitants, and their eligible family members.

DATES: Interim rules are effective November 14, 2007. OPM must receive comments on or before December 14, 2007.

ADDRESSES: Send written comments to Nataya Battle, Senior Policy Analyst, Center for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or deliver to OPM, Room 3415, 1900 E Street, NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Nataya Battle, (202) 606–1874, or e-mail at *nataya.battle@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2004, Public Law 108–496, 118 Stat. 4001, was signed into law. This law established a dental benefits and vision benefits program for Federal employees, annuitants, and their eligible family members. The first effective date of coverage was December 31, 2006.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking for this rule because general notice of proposed rulemaking is unnecessary and would be contrary to the public interest. By law the Federal Employees Dental and Vision Insurance Program became effective in 2006. Congress and the Administration intended for the Program to be available to enrollees as of the end of 2006, and the rules governing the program are effectively established in the existing contracts that OPM has entered into with the dental and vision carriers pursuant to the FEDVIP law. These interim regulations explain the program rules to affected enrollees and the general public, and will assist the administration of the Program. OPM will accept comment on these interim rules, and will consider changes to the Program for future years.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects dental and vision benefits of Federal employees and annuitants.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

List of Subjects in 5 CFR Part 894

Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ For the reasons stated in the Preamble, OPM is adding part 894 to title 5, Code of Federal Regulations, as follows:

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

Subpart A—Administration and General Provisions

Sec.

Subpart B—Coverage and Types of Enrollment

Subpart C—Eligibility

Subpart D—Cost of Coverage

Subpart E—Enrolling and Changing Enrollment

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992.

Subpart A—Administration and General Provisions

§ 894.101 Definitions

This part is written as if the reader were an applicant or enrollee. Accordingly, the terms ''you,'' ''your,'' etc., refer, as appropriate, to the applicant or enrollee.

Acquiring an eligible child means one of the following:

(1) Birth of a child;

(2) Adoption of a child;

(3) Acquisition of a foster child as described in § 894.306;

(4) Residence change of the enrollee's stepchild or recognized natural child who moves in with the enrollee;

(5) Establishment of dependency of a recognized natural child as described in § 890.302(b) of this chapter; and

(6) An otherwise eligible child's lose of spouse due to divorce or annulment of marriage, or death.

Administrator means the entity with which the Office of Personnel Management contracts to manage the enrollment and premium payment process for the Federal Employees Dental and Vision Insurance Program (FEDVIP).

Annuitant means an individual defined at 5 U.S.C. 8901(3). General, the term means a former employee who is entitled to an immediate annuity or a disability annuity under a retirement system established for employees. The term also generally includes those receiving a survivor annuity due to the death of a Federal employee or annuitant (survivor annuitants) and those receiving compensation from the Office of Workers' Compensation Programs (compensationers). The term does not include former employees who retire with a deferred annuity under 5 U.S.C. 8413, or former spouses of annuitants.

Carrier means a company with which the Office of Personnel Management contracts to provide dental and/or vision benefits.

Child means one of the following:

(1)(i) A child born within marriage;

(ii) An adopted child;

(iii) A stepchild or foster child who lives with the enrollee in a regular parent-child relationship; or

(iv) A recognized natural child.

(2) This definition does not include a grandchild (unless the grandchild meets all the requirements of a foster child as stated in § 894.306).

(3) The child must be unmarried and under age 22. A child age 22 or over is eligible if the child is incapable of self-support because of a physical or mental disability that existed before the child reached age 22.

Compensation has the same meaning as found under subchapter I of chapter 81 of title 5, United States Code, which is payable because of an on-the-job injury or disease.

Compensationer means an individual who is receiving compensation and who the Department of Labor determines is unable to return to duty.

Covered position means a position in which an employee is not excluded from FEDVIP eligibility by law or regulation.

Days means calendar days.

Dependent means an unmarried child who is living with or receiving regular and substantial support from the enrollee.

Employee means an individual defined in 5 U.S.C. 8901. For the purposes of this subpart, the term employee additionally means an employee of the United States Postal Service and an employee of the District of Columbia courts.

Enrollment reconsideration means the carriers' administrative review of its initial enrollment decision to determine if it followed the law and regulations correctly in making the initial decision concerning FEDVIP eligibility.

Family member means a spouse (including a spouse under a valid common law marriage) and/or unmarried dependent child(ren).

OPM means the Office of Personnel Management.

OWCP means the Office of Workers' Compensation Programs, U.S. Department of Labor.

Premium conversion means the payment of FEDVIP premiums using pre-tax dollars. See § 892.102 of this chapter for a discussion of how premium conversion works.

QLE means a qualifying life event.

Recognized natural child means a biological child born outside of marriage. A recognized natural child is an eligible family member if the child lives with the enrollee or receives financial support from the enrollee.

Regular parent-child relationship means that the enrollee is exercising parental authority, responsibility, and control over the child; is caring for, supporting the child; and is making the decisions about the child's education and medical care.

Type of enrollment means one of the following:

(1) Self only;

(2) Self plus one; or

(3) Self and family.

§ 894.102 If I have a pre-existing dental or vision condition, may I join FEDVIP?

Yes. Pre-existing conditions do not exclude you from coverage under FEDVIP. Carriers may not deny an individual the right to enroll solely because of a preexisting dental or vision condition.

§ 894.103 How do I enroll?

You may enroll through an Administrator contracted by OPM to facilitate the enrollment process. Your Federal agency, retirement system, or OWCP office will advise you of the enrollment process available to you.

§ 894.104 Who makes enrollment decisions and reconsiderations?

The carriers' make enrollment decisions and the carriers review requests for reconsideration of an enrollment decision. The carrier's initial enrollment decision denying enrollment or an opportunity to change coverage

must be in writing and must inform you about your right to reconsideration.

§ 894.105 Who may correct an error in my enrollment?

(a) The Administrator may correct administrative errors about the processing of your enrollment or changes in enrollment.

(b) OPM may order correction of an administrative error if it receives evidence that it would be against equity (fairness) and good conscience not to order the correction. This decision is made at the discretion of OPM and is not subject to review.

(c) If the correction gives you retroactive coverage, you must pay the premiums for all periods of the retroactive coverage. These premiums will not be on a pre-tax basis (they are not subject to premium conversion).

Subpart B—Coverage and Types of Enrollment

§ 894.201 What types of enrollments are available under FEDVIP?

FEDVIP has three types of enrollment:

(a) Self only, which covers only the enrolled employee or annuitant;

(b) Self plus one, which covers the enrolled employee or annuitant plus one eligible family member; and

(c) Self and family, which covers the enrolled employee or annuitant and all eligible family members.

§ 894.202 If I enroll for self plus one, may I decide which family member to cover?

Yes, if you enroll for self plus one, you must state at the time you enroll which eligible family member you want to cover under your enrollment.

§ 894.203 If I have a self plus one enrollment, when may I change which family member I want to cover or change to self only?

You may change your covered family member under a self plus one enrollment or change to self only coverage in the following situations:

(a) During the annual open season;

(b) If your covered family member dies during the year; or

(c) If your covered family member loses eligibility during the year.

§ 894.204 May I be enrolled in more than one dental or vision plan at a time?

You may be enrolled in a FEDVIP dental plan and a separate FEDVIP vision plan at the same time. But no one may enroll or be covered as a family member in a FEDVIP dental or vision plan if he or she is covered under another person's FEDVIP dental or vision self plus one or self and family enrollment, except as provided under § 890.302 (a)(2) through (4) of this chapter, with respect to dual enrollments.

Subpart C—Eligibility

§ 894.301 Am I eligible to enroll in the FEDVIP?

You are eligible if you meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position. You are eligible if you are an employee of the United States Postal Service or the District of Columbia courts.

§ 894.302 What is an excluded position?

Excluded positions are described in 5 U.S.C. 8901(1)(i) and 5 CFR 890.102(c), except that employees of the United States Postal Service and District of Columbia courts are not excluded positions.

You are in an excluded position if you are:

(a) An employee of a corporation supervised by the Farm Credit Administration, if private interests elect or appoint a member of the board of directors.

(b) An employee who is not a citizen or national of the United States and your permanent duty station is outside the United States. *Exception:* You are eligible if you met the definition of employee on September 30, 1979, by service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area that was then known as the Canal Zone.

(c) An employee of the Tennessee Valley Authority.

(d) An individual first employed by the Government of the District of Columbia on or after October 1, 1987, except employees of the District of Columbia Courts and those employees defined at § 890.102(c)(8) of this chapter.

(e) Serving under an appointment limited to 1 year or less. *Exceptions:* You are eligible if:

(1) You are an acting postmaster;

(2) You are a Presidential appointee appointed to fill an unexpired term;

(3) You are an employee with a provisional appointment, as defined in § 316.401 and § 316.403 of this chapter; or

(4) You have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

(f) You are expected to work fewer than 6 months in each year. *Exception:* You are eligible if you are employed under an OPM-approved career-related work-study program under Schedule B. To qualify, your work-study program must last at least 1 year, and you must be expected to be in pay status for at least one-third of the total period of time from the date of your first appointment to the date you complete the work-study program.

(g) An intermittent employee (a non-full-time employee without a prearranged regular tour of duty).

(h) A beneficiary or patient employee in a Government hospital or home.

(i) Paid on a contract or fee basis. *Exception:* You are eligible if you are a United States citizen, and you are appointed by a contract between you and the Federal employing authority. To qualify, your contract must require your personal service, and you must be paid on the basis of units of time.

(j) Paid on a piecework basis. *Exception:* You are eligible if your work schedule provides for full-time or part-time service, and you have a regularly scheduled tour of duty.

(k) The following positions are not excluded positions:

(1) An employee appointed to perform ''part-time career employment,'' as defined in section 3401(2) of title 5, U.S.C., and 5 CFR part 430, subpart B; or

(2) An employee serving under an interim appointment established under § 772.102 of this chapter.

§ 894.303 What happens to my enrollment if I transfer to an excluded position?

(a) If you have FEDVIP coverage and you transfer to a position excluded under § 894.302(a) through (d), your enrollment stops.

(b) If you have FEDVIP coverage and you transfer to a position excluded under § 894.302(e) through (j) with no break in service of more than 3 days, your enrollment is not affected. If you have a break in service of more than 3 days, your enrollment stops.

(c) If you did not elect to enroll in FEDVIP and then transfer to an excluded position, you lose all rights to enroll at that time.

§ 894.304 Am I eligible to enroll if I'm retired or receiving workers' compensation?

If you are retired, receiving workers' compensation, or are a survivor annuitant, you are eligible if you meet the definition of annuitant in 5 U.S.C. 8901(3).

§ 894.305 Am I eligible to enroll if I am a former spouse receiving an apportionment of annuity?

No. Former spouses receiving an apportionment of annuity are not eligible to enroll in FEDVIP.

§ 894.306 Are foster children eligible as family members?

Yes, foster children may be eligible for coverage as family members under FEDVIP.

§ 894.307 Are disabled children age 22 or over eligible as family members?

A child age 22 or over is an eligible family member if the child is incapable of self-support because of a physical or mental disability that existed before the child reached age 22.

Subpart D—Cost of Coverage

§ 894.401 How do I pay premiums?

(a) Employees pay premiums through payroll allotments.

(b) Annuitants and survivor annuitants pay premiums through annuity allotments.

(c) Compensationers pay premiums through allotments from compensation payments.

(d) In limited circumstances, individuals may make direct premium payments. See § 894.405.

§ 894.402 Do the premiums I pay reflect the cost of providing benefits?

The premiums you pay shall reasonably and equitably reflect the cost of the benefits provided.

§ 894.403 Are FEDVIP premiums paid on a pre-tax basis?

(a) Your FEDVIP premiums are paid on a pre-tax basis (called premium conversion) if you are an active employee, your salary is sufficient to make the premium allotments, and your agency is able to make pre-tax allotments.

(b) Your FEDVIP premiums are not paid on a pre-tax basis if:

(1) You are an employee in nonpay status or an employee whose salary is not high enough to make premium allotments, or your agency is unable to make pre-tax allotments;

(2) You are an annuitant, a survivor annuitant, or a compensationer;

(3) Your enrollment change was made effective retroactively which resulted in additional premium withholdings, unless it is as a result of birth or adoption of a child .

(4) You have been approved to pay premiums directly to the Administrator.

§ 894.404 May I opt out of premium conversion?

No, all enrolled employees whose salary is sufficient to make premium allotments and whose agency is able to make pre-tax allotments must participate in premium conversion.

§ 894.405 What happens if I go into nonpay status or if my pay/annuity is insufficient to cover the allotments?

(a) If your pay, annuity, or compensation is too low to cover the premium allotments, or if you go into a nonpay status, contact the Administrator to arrange to pay your premiums directly to the Administrator.

(b) If you do not make the premium payments, your FEDVIP coverage will stop. You will not be able to reenroll until the next open season after:

(1) You are in pay status; or

(2) Your pay is sufficient to make the premium allotments.

Subpart E—Enrollment and Changing Enrollment

§ 894.501 When may I enroll?

You may enroll:

(a) During the annual open season;

(b) Within 60 days after you first become eligible as:

(1) A new employee;

(2) A previously ineligible employee who transfers to a covered position; or

(3) A new survivor annuitant, if not already covered under FEDVIP.

(c) Within 60 days of when you return to service following a break in service of at least 30 days; or

(d) Within 60 days of a QLE that allows you to enroll.

§ 894.502 What are the Qualifying Life Events (QLEs) that allow me to enroll?

(a) You or an eligible family member lose other dental/vision coverage;

(b) Your annuity or compensation is restored after having been terminated; or

(c) You return to pay status after being on leave without pay due to deployment to active military duty.

§ 894.503 Are belated enrollments or changes allowed?

(a) The time limit for enrolling or changing your enrollment may be extended up to 3 months after the date you became newly eligible or had a QLE or after the end of an open season. To qualify, you must demonstrate to the carrier that you were not able to enroll or change your enrollment on time for reasons beyond your control.

(b) If the carrier allows you to make a belated enrollment or enrollment change, you must enroll or change within 30 days after the carrier notifies you of its determination.

§ 894.504 When is my enrollment effective?

(a) Open season enrollments are effective on the date set by OPM.

(b) If you enroll when you first become eligible your enrollment is effective the 1st day of the pay period following the one in which the Administrator receives your enrollment, but no earlier than December 31, 2006.

(c)(1) A belated open season enrollment is effective retroactive to the date it would have been effective if you had made a timely enrollment or request for a change.

(2) Any other belated enrollment or change is effective retroactive to the 1st day of the pay period following the one in which you became newly eligible or the date of your QLE.

(3) You are responsible for any retroactive premiums due to a belated enrollment or request for a change.

§ 894.505 Are retroactive premiums paid with pre-tax dollars (premium conversion)?

Retroactive premiums are not paid under premium conversion, except when you are changing your enrollment retroactively as a result of birth or adoption of a child. Any additional withholdings for retroactive premiums that are due must be made with after-tax dollars. The Administrator will bill you directly for any retroactive premiums that must be paid with after-tax dollars.

§ 894.506 How often will there be open seasons?

There will be an annual open season for FEDVIP at the same time as the annual FEHB Program open season.

§ 894.507 After I'm enrolled, may I change from one dental or vision plan or plan option to another?

(a) You may change from one dental and/or vision plan or one plan option to another option in that same plan during the annual open season.

(b)(1) If you are enrolled in a dental or vision plan with a geographically restricted service area, and you or a covered eligible family member move out of the service area, you may change to a different dental or vision plan that serves that area.

(2) You may make this change at any time before or after the move, once you or a covered eligible family member has a new address.

(3) The enrollment change is effective the first day of the pay period following the pay period in which you make the change.

(4) You may not change your type of enrollment unless you also have a QLE that allows you to change your type of enrollment.

§ 894.508 When may I increase my type of enrollment?

(a) You may increase your type of enrollment

(1) During the annual open season; or

(2) If you have a QLE that is consistent with increasing your type of enrollment.

(b) Increasing your type of enrollment means going from:
(1) Self only to self plus one;
(2) Self only to self and family; or
(3) Self plus one to self and family.
(c) You may increase your type of enrollment during the time period beginning 31 days before the QLE and ending 60 days after the QLE.
(d) Your new type of enrollment is effective the 1st day of the pay period following the pay period in which you make the change.
(e) You may not change from one dental or vision plan to another, except as stated in § 894.508(b).

§ 894.509 What are the QLEs that are consistent with increasing my type of enrollment?

(a) Marriage;
(b) Acquiring an eligible child; or
(c) Loss of other dental or vision coverage by an eligible family member.

§ 894.510 When may I decrease my type of enrollment?

(a) You may decrease your type of enrollment
(1) During the annual open season; or
(2) If you have a QLE that is consistent with decreasing your type of enrollment.
(b) Decreasing your type of enrollment means going from:
(1) Self and family to self plus one;
(2) Self and family to self only; or
(3) Self plus one to self only.
(c) You may decrease your type of enrollment during the time period beginning 31 days before your QLE and ending 60 days after your QLE.
(d) Your new type of enrollment is effective the 1st day of the pay period following the one in which you make the change.
(e) You may not change from one dental or vision plan or option to another, except as stated in § 894.508(b).

§ 894.511 What are the QLEs that are consistent with decreasing my type of enrollment?

(a) Loss of an eligible family member due to:
(1) Divorce;
(2) Death; or
(3) Loss of eligibility of a previously enrolled child.
(b) Your spouse deploys to active military duty.

§ 894.512 What happens if I leave Federal Government and then return?

(a) Your FEDVIP coverage terminates at the end of the pay period in which you separate from government service. *Exception:* If you separate for retirement or while in receipt of workers' compensation as defined in § 894.701, your FEDVIP coverage continues.

(b)(1) If you return to Federal service after a break in service of fewer than 30 days, and you were not previously enrolled in FEDVIP, you may not enroll until the next open season or unless you have a QLE that allows you to enroll.
(2) If you return to Federal service after a break in service of fewer than 30 days, and you were previously enrolled in FEDVIP, you may reenroll in the same plan(s) and plan option and with the same type of enrollment you had before you separated. *Exceptions:*
(i) If you were enrolled in a dental or vision plan with a restricted geographic service area, and you have since moved out of the plan's service area, you may change to a different dental or vision plan that serves that area.
(ii) If you have since gained or lost an eligible family member, you may change your type of enrollment consistent with the change in the number of eligible family members.
(3) If you return to Federal service as a new hire after a break in service of 30 days or more, you may enroll if you were not previously enrolled, change your dental or vision plan, and/or change your type of enrollment.

Subpart F—Termination or Cancellation of Coverage

§ 894.601 When does my FEDVIP coverage stop?

(a) If you no longer meet the definition of an eligible employee or annuitant, your FEDVIP coverage stops at the end of the pay period in which you were last eligible.
(b) If you go into a period of nonpay or insufficient pay, and you do not make direct premium payments, your FEDVIP coverage stops at the end of the pay period for which your agency, retirement system, or OWCP last made a premium allotment from your pay.
(c) If you are making direct premium payments, and you stop making the payments, your FEDVIP coverage stops at the end of the pay period for which you last made a payment.
(d) If you cancel your enrollment during an open season, your FEDVIP coverage stops at midnight of the day before the effective date of an open season change as set by OPM.
(e) If you are enrolled with a combination dental and vision carrier with a restricted service area, and you move outside the carrier's service area to a service area that does not offer a combination carrier and you change to a dental only or vision only carrier, your existing combination plan coverage will stop at midnight of the day before the effective date of your new plan coverage.
(f) If your FEDVIP carrier discontinues participation in the program at the end of the contract year, then you must change to another carrier during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM will establish a time and effective date for you to change your carrier. If you do not change your carrier within the time set by OPM, your coverage will stop at midnight of the day before the effective date set by OPM for coverage with another carrier.

§ 894.602 May I cancel my enrollment at any time?

No. You may only cancel your enrollment during an open season. *Exceptions:* You may cancel your dental and/or vision enrollment if you transfer to an eligible position with a Federal agency that provides dental and/or vision coverage with 50 percent or more employer-paid premiums. You may also cancel upon deployment to active military duty. These cancellations will become effective at the end of the pay period that you submit your request.

§ 894.603 Is there an extension of coverage and right to convert when my coverage stops or when a covered family member loses eligibility?

No. There is no extension of coverage or right to convert to an individual policy or Temporary Continuation of Coverage (TCC) when your FEDVIP coverage stops or when a family member loses eligibility under the Program.

Subpart G—Annuitants and Compensationers

§ 894.701 May I keep my dental and/or vision coverage when I retire or start receiving workers' compensation?

(a) Your FEDVIP coverage continues if you retire on an immediate annuity or on a disability annuity, or start receiving compensation from OWCP.
(b) If you retire on a Minimum Retirement Age +10 annuity that you elect to postpone in accordance with 5 U.S.C. 8412(g), your FEDVIP coverage will stop when you separate from service. However, you may enroll again within 60 days of when your annuity starts.
(c) If you retire on a deferred annuity in accordance with 5 U.S.C. 8413, your FEDVIP coverage stops and you are not eligible to enroll.

§ 894.702 May I participate in open season and make changes to my enrollment as an annuitant or compensationer?

Yes. Annuitants and compensationers may participate in open season and

make enrollment changes under the same circumstances as active employees.

§ 894.703 How long does my coverage as an annuitant or compensationer last?

Your coverage as an annuitant or compensationer continues as long as you continue receiving an annuity or compensation and pay your premiums, unless you cancel your coverage during an open season or terminate coverage due to insufficient annuity or compensation.

§ 894.704 What happens if I retire and then come back to work for the Federal Government?

(a) If you have FEDVIP coverage as an annuitant, and you become reemployed in an eligible position in Federal service, you must contact the Administrator so it can send the request for allotments to your agency so your agency can start making the allotments from your pay.

(b) If you did not enroll in FEDVIP coverage as an annuitant and become reemployed in an eligible Federal position, you have 60 days to enroll in FEDVIP.

(c) If you enroll as an employee the Administrator will stop sending requests for allotments from your annuity.

Subpart H—Benefits in Underserved Areas

§ 894.801 Will benefits be available in underserved areas?

(a) Dental and vision plans under FEDVIP will include underserved areas in their service areas and provide benefits to enrollees in underserved areas.

(b) In any area where a FEDVIP dental or vision plan does not meet OPM access standards, including underserved areas, enrollees may receive services from non-network providers.

(c) Contracts under FEDVIP shall include access standards as defined by OPM and payment levels for services to non-network providers in areas that do not meet access standards.

[FR Doc. E7–20193 Filed 10–12–07; 8:45 am]

BILLING CODE 6325–39–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 711

Management Official Interlocks Threshold Change

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is amending its management interlocks rule to conform it to a change the Financial Services Regulatory Relief Act of 2006 (FSRAA) made in the dollar threshold that triggers the prohibition on management officials serving at unaffiliated depository organizations. This final rule changes the threshold from $20 million to $50 million.

DATES: This rule is effective as of October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Annette Tapia, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Depository Institution Management Interlocks Act (Interlocks Act) prohibits individuals from simultaneously serving as a management official at two unaffiliated depository institutions or their holding companies (collectively, depository organizations) under certain circumstances. 12 U.S.C. 3201 *et seq.* Section 203(1) of the Interlocks Act prohibits interlocks between unaffiliated depository organizations if each depository organization or its affiliate has an office in the same relevant metropolitan statistical area (RMSA prohibition), unless each of the depository organizations or affiliates involved has total assets below a specified threshold. Before enactment of FSRRA, this asset threshold was $20 million; however, section 610 of FSRRA amended the Interlocks Act by raising this asset threshold to $50 million, effective October 13, 2006.

This final rule tracks changes the other federal financial institution regulators have made in their management interlocks rules. 72 FR 38753 (July 16, 2007).

B. Regulatory Changes

NCUA is amending § 711.3(b) to implement section 610 of FSRRA. Specifically, the final rule modifies the RMSA prohibition to allow a management official of one depository organization to serve as a management official of an unaffiliated depository organization that has an office in the same RMSA as the first organization if each of the depository organizations or affiliates involved has total assets of less than $50 million.

C. Regulatory Procedures

Final Rule Under the Administrative Procedure Act

Generally, the Administrative Procedure Act (APA) requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendment in this rule is not substantive but technical in that it merely incorporates into NCUA's regulations a statutory increase in the threshold. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and not substantive. For these reasons, NCUA finds good cause that notice and public comment are unnecessary under Section 553(b)(3)(B) of the APA, 5 U.S.C. 553(b)(3)(B), and also finds good cause to dispense with the 30-day delayed effective date requirement under Section 553(d)(3) of the APA. 5 U.S.C. 553(d)(3). The rule will, therefore, be effective upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (those credit unions under ten million dollars in assets). This rule changes NCUA's regulation to conform to a statutory change. This rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism

implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Management and Budget is currently reviewing this rule as it pertains to SBREFA.

List of Subjects in 12 CFR Part 711

Antitrust, Banks, Banking, Credit unions.

By the National Credit Union Administration Board on October 9, 2007.

Mary Rupp,

Secretary of the Board.

■ For the reasons discussed above, NCUA is amending part 711 as follows:

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

■ 1. The authority citation for part 711 continues to read as follows:

Authority: 12 U.S.C. 1757 and 3201–3208.

■ 2. Section 711.3(b) is amended by removing the number ''20'' and adding number ''50'' in its place.

[FR Doc. E7–20266 Filed 10–12–07; 8:45 am]

BILLING CODE 7535–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2007. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2007, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2007, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2007.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.46 percent for the first 20 years following the valuation date and 5.13 percent thereafter. These interest assumptions represent a decrease (from those in effect for October 2007) of 0.05 percent for the first 20 years following the valuation date and 0.05 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for October 2007. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2007, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 169, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *		*	*		*		*	
169	11–1–07	12–1–07	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 169, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *		*	*		*		*	
169	11–1–07	12–1–07	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for November 2007, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*		*	
November 2007	.0546	1-20	.0513	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of October 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–20270 Filed 10–12–07; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–07–025]

Drawbridge Operation Regulations; Charenton Drainage and Navigation Canal, Baldwin, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the BNSF Railway Company Swing Bridge across the Charenton Drainage and Navigational Canal, mile 0.4, at Baldwin, St. Mary Parish, LA. This deviation provides for the bridge to remain closed to navigation for 5 days with three hour openings each day to conduct maintenance repairs to the drawbridge.

DATES: This deviation is effective from 8 a.m. on October 22, 2007 through 8 p.m. on October 26, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 671–2128. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Bart Marcules, Bridge Administration Branch, telephone (504) 671–2128.

SUPPLEMENTARY INFORMATION: The BNSF Railway Company has requested a temporary deviation in order to replace or repair a bent shaft, bearings, and housing that are integral to the safe operation of the swing bridge across the Charenton Drainage and Navigational Canal, mile 0.4, at Baldwin, St. Mary Parish, LA. This bridge opens on signal

in accordance with 33 CFR 117.5, but this temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. on October 22, 2007 through 8 p.m. on October 26, 2007. BNSF will provide an opening from 8 a.m. till 11 a.m. every day starting October 23, 2007. An alternate route is available through the Berwick Locks. The bridge provides 10 feet of vertical clearance in the closed-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft including sailboats and powerboats. Due to prior experience, as well as coordination with waterway users, and an alternate route through Berwick Locks it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 2, 2007.

David M. Frank,

Bridge Administrator.

[FR Doc. E7–20207 Filed 10–12–07; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 601

Purchasing of Property and Services

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ is making several minor revisions to its regulations governing the purchasing of property and services to comply with certain findings and suggestions of the Government Accountability Office, and to clarify a variety of procedural matters.

DATES: This final rule is effective November 14, 2007.

FOR FURTHER INFORMATION CONTACT: Paul McGinn, (202) 268–4638, or Syvera O'Pharrow, (202) 268–8110.

SUPPLEMENTARY INFORMATION: The Postal Service is making several minor revisions to its regulations governing the purchasing of property and services in order to (1) comply with some of the findings in the Government Accountability Office's (GAO) report, GAO–06–190, *U.S. Postal Service: Purchasing Changes Seem Promising, but Revisions to Ombudsman Position are Needed*, and (2) clarify some procedural matters. In its report, GAO stated that the Postal Service's Ombudsman regulatory provisions and guidance contained in 39 CFR Part 601 were inconsistent with leading Ombudsman principles and practices. In response, the Postal Service benchmarked its supplier disagreement resolution process against a variety of private sector companies, and found that the process conforms to leading business principles and practices. We do agree with GAO that the use of the term Ombudsman is inaccurate, however, and therefore have changed the term to Supplier Disagreement Resolution Official (SDR Official). In addition, several minor procedural changes have been made to the regulations and business processes published in May of 2005, and these are explained in more detail below.

Explanation of Changes

Section 601.100 Purchasing Policy

This section has been revised for clarity, specifically by stating that the Postal Service acquires property and services pursuant to the authority of 39 U.S.C. 410.

Section 601.101 Effective Date

This section has been revised to state that the revised regulations will take effect thirty days after publication.

Section 601.102 Revocation of Prior Purchasing Regulations

The reference to section 601.103 has been deleted due to a revision to that section.

Section 601.103 Applicability and Coverage

This section has been revised to state that these regulations apply to all Postal Service acquisitions of property (except real property) and services.

Section 601.104 Postal Purchasing Authority

This section has not been changed.

Section 601.105 Business Relationships

In paragraph (a), the last sentence of the text has been revised to make it clear that the Postal Service reserves the right to decline to accept or consider proposals from a person or organization when that person or organization fails to meet reasonable business expectations. Previous section 601.106 has been revised and included in this section as a new paragraph (b). The first sentence in the new paragraph (b) has been revised for clarity by indicating under what circumstances the Postal Service reserves the right to decline to accept or consider proposals. Paragraph (c) has been revised to state that written notices must be by certified mail, return receipt requested. Subparagraph (c)(4) has been revised to require that the written notice to the supplier establish the period of time during which the decision to decline to accept or consider proposals is in effect. Paragraph (d) has been revised to provide a cross-reference to section 601.108.

Section 601.106 Reserved

As discussed above, the previous text in this section has been combined into a new paragraph (b) of section 601.105.

Section 601.107 Initial Disagreement Resolution

This section includes a new paragraph (a) ''Definitions'', that provides definition for certain terms that appear throughout the regulations. Paragraph (b) has been revised to state that all disagreements lodged with the contracting officer must be in writing and to describe the methods in which a person or organization may lodge a business disagreement with the contracting officer and to delineate the timeframe a person or organization has to lodge a disagreement. This section has also been revised to state that the contracting officer's manager may help to resolve the disagreement and that at the conclusion of the ten day resolution period, the contracting officer must communicate, in writing, to the supplier his or her resolution of the disagreement. This section has been further revised by moving the text discussing disagreements not resolved within 10 days to section 601.108(a). The text regarding alternative dispute resolution has been retained and codified in paragraph (c).

Section 601.108 SDR Official Disagreement Resolution

The Ombudsman has been given a new title: Supplier Disagreement Resolution Official (''SDR Official''), and this term is used throughout the regulations. Text regarding disagreements not resolved within 10 days has been moved from section 601.107 to this section under paragraph (a). Because neither 39 U.S.C. 410 nor other public laws apply to the Postal Service's administrative resolution of supplier disagreements, the previous reference to ''39 U.S.C. 410, and all other applicable public laws enacted by Congress'' has been deleted. The definition of disagreements in paragraph (b) has been deleted and is now included in the ''Definitions'' paragraph discussed above. Paragraph (c) has been expanded to include the address for submitting supplier disagreements. In

paragraph (d), new text has been added delineating the timeframes that apply for lodging a disagreement with the SDR Official, and new text has also been added addressing the supplier's filing of a request for an extension of time. Paragraph (e) has been revised to incorporate guidance on the submission of confidential information. The term ''interested parties'' now defined in paragraph 601.107(a), replaces ''interested persons'' throughout section 601.108.

Section 601.109 Contract Claims and Disputes

Paragraph (a) has been revised to give the supplier the option of using the SDR Official as a mediator for contract performance disagreements prior to bringing a contract claim or dispute under this section. Paragraph (g)(3) has been revised to give the contracting officer the option to request additional information prior to making a decision.

Section 601.110 Payment of Claims; Section 601.111 Interest on Claim Amounts; Section 601.112 Review of Adverse Decisions

These sections have not been changed.

Section 601.113 Debarment, Suspension, and Ineligibility

Paragraph (a) has been revised to be consistent with the discussion of the same matter in subparagraph (d)(2). The definition of ''Affiliate'' under subparagraph (b)(1) has been revised to clarify the definition of control. The definition of ''Judicial Officer'' originally set forth in subparagraph (b)(6) has been deleted. Subparagraph (c)(1) has been revised because the Postal Service no longer distributes a hardcopy of the list of debarred and suspended suppliers to contracting officers; the list is maintained electronically and is available internally on the Postal Service's Supply Management Web site. Subparagraph (c)(2) has been revised because the original regulations only considered hardcopy versions; GSA no longer publishes hardcopies and the list is maintained electronically on GSA's Web site. Subparagraph (d)(2) has been revised to state clearly that the supplier must review the consolidated GSA list in order to exclude suppliers debarred or suspended by the Postal Service from performing part of a Postal Service contract (the Postal Service list is available internally only). Subparagraph (d)(3) has been changed for consistency with the previous subparagraph. The words ''insignificant or significant minor service changes'' have been added in subparagraph (d)(5); this requires only major service changes to be approved by the vice president of Supply Management. In subparagraph (e)(3) the term ''debarring official'' has been replaced with the term ''vice president of Supply Management'' for consistency.

A new subparagraph (e)(v) has been included as a basis for debarment.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service.

■ Accordingly, 39 CFR part 601 is revised to read as follows:

PART 601—PURCHASING OF PROPERTY AND SERVICES

Sec.

Authority: 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

§ 601.100 Purchasing policy.

The Postal Service acquires property and services pursuant to the authority of 39 U.S.C. 410.

§ 601.101 Effective date.

These regulations are effective November 14, 2007. Solicitations issued and resulting contracts entered into prior to that date will be governed by the regulations in effect at the time the solicitation was issued.

§ 601.102 Revocation of prior purchasing regulations.

All previous postal purchasing regulations, including the *Postal Contracting Manual*, *Procurement Manual*, the *Purchasing Manual* (Issues 1, 2 and 3), and procurement handbooks, circulars, and instructions, are revoked and are superseded by the regulations contained in this part.

§ 601.103 Applicability and coverage.

The regulations contained in this part apply to all Postal Service acquisition of property (except real property) and services.

§ 601.104 Postal purchasing authority.

Only the Postmaster General/CEO; the Postal Service's vice president, Supply Management; contracting officers with written statements of specific authority; and others designated in writing or listed in this part have the authority to bind the Postal Service with respect to entering into, modifying, or terminating any contract regarding the acquisition of property, services, and related purchasing matters. The Postal Service's vice president, Supply Management, or his or her designee, may also delegate in writing local buying authority throughout the Postal Service.

§ 601.105 Business relationships.

(a) *General.* A person or organization wishing to have a continuing business relationship with the Postal Service in purchasing matters is expected to treat the Postal Service in the same manner as it would other valued customers of similar size and importance. The Postal Service reserves the right to decline to accept or consider proposals from a person or organization when that person or organization fails to meet reasonable business expectations or provide a high level of confidence regarding quality, prompt service, and overall professionalism.

(b) *Declining to accept or consider proposals.* The Postal Service may decline to accept or consider proposals when a person or organization exhibits unacceptable conduct or business practices that do not meet reasonable business expectations or does not provide a high level of confidence about the entity's current or future business relations. Unacceptable conduct or business practices include, but are not limited to:

(1) Marginal or dilatory contract performance;

(2) Failure to deliver on promises made in the course of dealings with the Postal Service;

(3) Providing false or misleading information regarding financial condition, ability to perform, or other material matters, including any aspect of performance on a contract; and

(4) Engaging in other questionable or unprofessional conduct or business practices.

(c) *Notice.* If the Postal Service elects to decline to accept or consider proposals from a person or organization, the vice president, Supply Management, or his or her designee, will provide a written notice to the person or organization *by Certified Mail, return receipt requested*, explaining:

(1) The reasons for the decision;

(2) The effective date of the decision;

(3) The scope of the decision;

(4) The period of time the decision will be in effect, (a matter at the Postal Service's discretion consistent with the circumstances); and

(5) The supplier's right to contest the decision.

(d) *Contesting Decisions.* If a person or organization believes the decision not to accept or consider proposals is not merited, it may contest the matter in accordance with § 601.108. The Postal Service may reconsider the matter and, if warranted, rescind or modify the decision to decline to accept or consider proposals.

§ 601.106 [Reserved]

§ 601.107 Initial disagreement resolution.

(a) *Definitions.*

(1) *Days.* Calendar days; however, any time period will run until a day which is not a Saturday, Sunday, or legal holiday.

(2) *Disagreements.* All disputes, protests, claims, disagreements, or demands of whatsoever nature arising in connection with the acquisition of property and services within the scope of § 601.103, above, except those:

(i) That arise pursuant to a contract under the Contract Disputes Act under § 601.109;

(ii) That concern debarment, suspension, or ineligibility under § 601.113; or

(iii) That arise out of the non-renewal of transportation contracts containing other provisions for the review of such decisions.

(3) *Interested parties.* Actual or prospective offerors whose direct economic interests would be affected by the award of, or failure to award, the contract.

(4) *Lodge.* A disagreement is lodged on the date it is received by the Contracting Officer or the Supplier Disagreement Resolution Official, as appropriate.

(5) *SDR Official.* The Supplier Disagreement Resolution Official, an individual designated by the Postal Service to perform the functions established under § 601.108.

(b) *Policy.* It is the policy of the Postal Service and in the interest of its suppliers to resolve disagreements by mutual agreement between the supplier and the responsible contracting officer. *All* disagreements arising in connection with the purchasing process must be lodged with the responsible contracting officer in writing via facsimile, e-mail, hand delivery, or U.S. Mail, within ten days of the date the supplier received notification of award or ten days from the date the supplier received a debriefing. During the supplier-contracting officer ten-day resolution period, the responsible contracting officer's management may help to resolve the disagreement. At the conclusion of the ten-day resolution period, the contracting officer must communicate, in writing, to the supplier his or her resolution of the disagreement.

(c) *Alternative dispute resolution.* Alternative dispute resolution (ADR) procedures may be used, if agreed to by all interested parties. The use of ADR to resolve the disagreement must be considered, regardless of the nature of the disagreement or when it occurred during the purchasing process. If the use of ADR is agreed upon, the ten-day limitation is suspended; if the parties cannot reach an agreement under ADR, the supplier has ten days to lodge its disagreement with the SDR Official.

§ 601.108 SDR Official disagreement resolution.

(a) *General.* From time to time, disagreements may arise between suppliers, potential suppliers, and the Postal Service regarding awards of contracts and related matters that are not resolved as set forth in § 601.107 above. If a disagreement under § 601.107 is not resolved within ten days after it was lodged with the contracting officer, if the use of ADR fails to resolve it at any time, or if the supplier is not satisfied with the contracting officer's resolution of the disagreement, or if the decision not to accept or consider proposals under § 601.105 is contested, the SDR Official is available to provide final resolution of the matter. The Postal Service desires to resolve all such disagreements quickly and inexpensively in keeping with the regulations in this part. In resolving disagreements, non-Postal Service procurement rules or regulations will not govern.

(b) *Scope and applicability.* In order to resolve expeditiously disagreements that are not resolved at the responsible contracting officer level, to reduce litigation expenses, inconvenience, and other costs for all parties, and to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons, the following procedure is established as the sole and exclusive means to resolve disagreements. All disagreements will be lodged with and resolved, with finality, by the SDR Official under and in accordance with the sole and exclusive procedure established in this section.

(c) *Lodging a disagreement.* The disagreement must be lodged in writing and must state the factual circumstances relating to it, the scope and outcome of the initial disagreement resolution attempt with the contracting officer, and the remedy sought. The address of the SDR Official is: Room 4130 (Attn: SDR Official), United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–4130. E-mail Address: *SDROfficial@usps.gov.* Fax Number: (202) 268–6234.

(d) *Lodging timeframes.* If a supplier wishes the SDR Official to consider any of the matters identified in § 601.108(a) disagreements must be lodged with that official within the following timeframes:

(1) Disagreements under § 601.107 not resolved with the contracting officer must be lodged with the SDR Official within twenty days after they were lodged with the contracting officer (unless ADR had been used to attempt to resolve them);

(2) Disagreements under § 601.107 for which ADR had been agreed to be used must be lodged with the SDR Official within ten days after the supplier knew or was informed by the contracting officer or otherwise that the matter was not resolved;

(3) Disagreements under § 601.107 resolved by the contracting officer as to which the supplier is unhappy with the resolution must be lodged with the SDR Official within ten days after the supplier first receives notification of the contracting officer's resolution; and

(4) Contests of decisions under § 601.105 to decline to accept or consider proposals must be lodged with the SDR Official within ten days of the supplier's receipt of the written notice explaining the decision.

(5) The SDR Official may grant an extension of time to lodge a disagreement or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the SDR Official on or before the time to lodge a disagreement lapses.

(e) *Decision process.* The SDR Official will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested parties. The SDR Official will consider a disagreement and any response by other interested parties and appropriate Postal Service officials within a time frame established by the SDR Official. The SDR Official may also meet individually or jointly with the person or organization lodging the disagreement, other interested parties, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the disagreement. The person or

organization lodging the disagreement, other interested parties, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the SDR Official. If a submission contains trade secrets or other confidential information, it should be accompanied by a copy of the submission from which the confidential matter has been redacted. The SDR Official will determine whether any redactions are appropriate and will be solely responsible for determining the treatment of any redacted materials. After obtaining such information, materials, and advice as may be needed, the SDR Official will promptly issue a written decision resolving the disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested parties, and appropriate Postal Service officials.

(f) *Guidance.* In considering and in resolving a disagreement, the SDR Official will be guided by the regulations contained in this part and all applicable public laws enacted by Congress. Non-Postal Service procurement rules or regulations and revoked Postal Service regulations will not apply or be taken into account in resolving disagreements. Failure of any party to provide requested information may be taken into account by the SDR Official in the decision.

(g) *Binding decision.* A decision of the SDR Official will be final and binding on the person or organization lodging the disagreement, other interested parties, and the Postal Service. However, the person or organization that lodged the disagreement or another interested person may appeal the decision of the SDR Official to a federal court with jurisdiction over such claims, but only on the grounds that the decision was procured by fraud or other criminal misconduct, or was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

(h) *Resolution timeframe.* It is intended that this procedure generally will resolve disagreements within approximately thirty days after the receipt of the disagreement by the SDR Official. The time may be shortened or lengthened depending on the complexity of the issues and other relevant considerations.

§ 601.109 Contract claims and disputes.

(a) *General.* This section implements the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613). If ADR is used, the SDR official may serve as a mediator for contract performance disagreements prior to bringing a contract claim or dispute under this part.

(b) *Policy.* It is the Postal Service's intent to resolve contractual claims and disputes by mutual agreement at the level of an authorized contracting officer whenever possible. In addition, the Postal Service supports and encourages the use of alternative dispute resolution as an effective way to understand, address, and resolve conflicts with suppliers. Efforts to resolve differences should be made before the issuance of a final decision on a claim, and even when the supplier does not agree to use ADR, the contracting officer should consider holding informal discussions between the parties in order to resolve the conflict before the issuance of a final decision.

(c) *Supplier claim initiation.* Supplier claims must be submitted in writing to the contracting officer for final decision. The contracting officer must document the contract file with evidence of the date of receipt of any submission that the contracting officer determines is a claim. Supplier claims must be submitted within 6 years after accrual of a claim unless the parties agreed to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995.

(d) *Postal Service claim initiation.* The contracting officer must issue a written decision on any Postal Service claim against a supplier, within six years after accrual of a claim, unless the parties agreed in writing to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995, or to a Postal Service claim based on a supplier claim involving fraud.

(e) *Certified claims.* Each supplier claim exceeding $100,000 must be accompanied by a certification in accordance with the supplier's contract.

(f) *Misrepresentation or fraud.* When the contracting officer determines that the supplier is unable to support any part of the claim and there is evidence or reason to believe the inability is attributable to either misrepresentation of fact or fraud on the supplier's part, the contracting officer must deny that part of the claim and refer the matter to the Office of Inspector General.

(g) *Decision and appeal*—(1) *Contracting officer's authority.* A contracting officer is authorized to decide or settle all claims arising under or relating to a contract subject to the Contract Disputes Act, except for:

(i) Claims or disputes for penalties or forfeitures prescribed by statutes or regulation that a Federal agency administers; or

(ii) Claims involving fraud.

(2) *Contracting officer's decision.* The contracting officer must review the facts pertinent to the claim, and may obtain assistance from assigned counsel and other advisors, and issue a final decision in writing. The decision must include a description of the claim or dispute with references to the pertinent contract provisions, a statement of the factual areas of agreement and disagreement, and a statement of the contracting officer's decision with supporting rationale.

(3) *Insufficient information.* When the contracting officer cannot issue a decision because the supplier has not provided sufficient information, the contracting officer may request the required information. Further failure to provide the requested information is an adequate reason to deny the claim.

(4) *Furnishing Decisions.* The contracting officer must furnish a copy of the decision to the supplier by Certified Mail™, return receipt requested, or by any other method that provides evidence of receipt.

(5) *Decisions on claims for $100,000 or less.* If the supplier has asked for a decision within sixty days, the contracting officer must issue a final decision on a claim of $100,000 or less within sixty calendar days of its receipt. The supplier may consider the contracting officer's failure to issue a decision within the applicable time period as a denial of its claim, and may file a suit or appeal on the claim.

(6) *Decisions on certified claims.* For certified claims over $100,000, the contracting officer must either issue a final decision within sixty days of their receipt or notify the supplier within the 60-day period of the time when a decision will be issued. The time period established must be reasonable, taking into account the size and complexity of the claim, the adequacy of the supplier's supporting data, and any other relevant factors.

(7) *Wording of decisions.* The contracting officer's final decision must contain the following paragraph: ''This is the final decision of the contracting officer pursuant to the Contract Disputes Act of 1978 and the clause of your contract entitled Claims and Disputes. You may appeal this decision to the Postal Service Board of Contract Appeals by mailing or otherwise furnishing written notice (preferably in triplicate) to the contracting officer within ninety days from the date you receive this decision. The notice should identify the contract by number, reference this decision, and indicate that an appeal is intended. Alternatively, you may bring an action

directly in the United States Court of Federal Claims within twelve months from the date you receive this decision.''

(8) *Additional wording for decisions of $50,000 or less.* When the claim or claims denied total $50,000 or less, the contracting officer must add the following to the paragraph: ''In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's small claims (expedited) procedure, which provides for a decision within approximately 120 days, or an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter.''

(9) *Additional wording for decisions over $50,000 up to $100,000.* When the claim or claims denied total $100,000 or less, but more than $50,000, the contracting officer must add the following to the paragraph: ''In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter.''

(10) *Information and resources.* Contracting officers must have sufficient information available at the time a final decision is issued on a claim so resolution of an appeal within the period set for an expedited disposition will not be delayed. Once an appeal is docketed, and expedited disposition is elected, contracting officers must devote sufficient resources to the appeal to ensure the schedule for resolution is met. Nothing in this part precludes an effort by the parties to settle a controversy after an appeal has been filed, although such efforts to settle the controversy will not suspend processing the appeal, unless the Board of Contract Appeals so directs.

§ 601.110 Payment of claims.

Any claim amount determined in a final decision to be payable, less any portion previously paid, should be promptly paid to the supplier without prejudice to either party in the event of appeal or action on the claim. In the absence of appeal by the Postal Service, a board or court decision favorable in whole or in part to the supplier must be implemented promptly. In cases when only the question of entitlement has been decided and the matter of amount has been remanded to the parties for negotiation, a final decision of the contracting officer must be issued if agreement is not reached promptly.

§ 601.111 Interest on claim amounts.

Interest on the amount found due on the supplier's claim must be paid from the date the contracting officer received the claim (properly certified, if required) or from the date payment would otherwise be due, if that date is later, until the date of payment. Simple interest will be paid at the rate established by the Secretary of the Treasury for each 6-month period in which the claim is pending. Information on the rate at which interest is payable is announced periodically in the *Postal Bulletin*.

§ 601.112 Review of adverse decisions.

Any party may seek review of an adverse decision of the Board of Contract Appeals in the Court of Appeals for the Federal Circuit or in any other appropriate forum.

§ 601.113 Debarment, suspension, and ineligibility.

(a) *General.* Except as provided otherwise in this part, contracting officers may not solicit proposals from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with debarred, suspended, or ineligible suppliers.

(b) *Definitions*—(1) *Affiliate.* A business, organization, person, or individual connected by the fact that one controls or has the power to control the other or by the fact that a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, contractual relationships, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a supplier which has the same or similar management, ownership, or principal employees as the supplier that was debarred, suspended, or proposed for debarment. Franchise agreements are not conclusive evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.

(2) *Debarment.* An exclusion from contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

(3) *General Counsel.* This includes the General Counsel's authorized representative.

(4) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

(5) *Ineligible.* An exclusion from contracting and subcontracting by an entity other than the Postal Service under statutes, executive orders, or regulations, such as the Davis-Bacon Act, the Service Contract Act, the Equal Employment Opportunity Acts, the Walsh-Healy Public Contracts Act, or the Environmental Protection Acts and related regulations or executive orders, to which the Postal Service is subject or has adopted as a matter of policy.

(6) *Suspension.* An exclusion from contracting and subcontracting for a reasonable period of time due to specified reasons or the pendency of a debarment proceeding.

(7) *Supplier.* For the purposes of this part, a supplier is any individual, person, or other legal entity that:

(i) Directly or indirectly (e.g., through an affiliate) submits offers for, is awarded, or reasonably may be expected to submit offers for or be awarded, a Postal Service contract, including a contract for carriage under Postal Service or commercial bills of lading, or a subcontract under a Postal Service contract; or

(ii) Conducts business or reasonably may be expected to conduct business with the Postal Service as a subcontractor, an agent, or as a representative of another supplier.

(c) *Establishment and maintenance of lists*—(1) The vice president, Supply Management will establish, maintain, and make available a list of suppliers debarred or suspended by the Postal Service to contracting officers.

(2) The General Services Administration (GSA) compiles and maintains a consolidated list of all persons and entities debarred, suspended, proposed for debarment, or declared ineligible by Federal agencies or the Government Accountability Office. GSA posts the list on the Internet.

(3) The vice president, Supply Management will notify the GSA of any Postal Service debarment, suspension, and change in the status of suppliers, including any of their affiliates, on the Postal Service list.

(d) *Treatment of suppliers on Postal Service or GSA lists.*

(1) Contracting officers will review the Postal Service and GSA lists before making a contract award.

(2) Suppliers on the Postal Service list are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or

quotations from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president, Supply Management, or his or her designee, after consultation with the General Counsel, has approved such action. Suppliers on the Postal Service list may not provide goods or services to other persons or entities for resale, in whole or part, to the Postal Service and such other persons or entities are obligated to review the consolidated GSA list in order to exclude suppliers debarred or suspended by the Postal Service from performing any part of a Postal Service contract.

(3) Suppliers on the GSA list are assigned a code by GSA which is related to the basis of ineligibility. The vice president, Supply Management maintains a table describing the Postal Service treatment assigned to each code. Suppliers on the GSA list who are coded as ineligible are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when the contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president, Supply Management, or designee, after consultation with the General Counsel, has approved such action. Suppliers on the GSA list may not provide goods or services to other persons or entities for resale, in whole or part, to the Postal Service, and such other persons or entities are obligated to review the consolidated GSA list in order to exclude debarred or suspended suppliers from performing any part of a Postal Service contract.

(4) Suppliers on the GSA list are assigned codes for which the table provides other Postal Service guidance, and are considered according to that guidance. When so indicated on the table, contracting officers must obtain additional information from the entity responsible for establishing the supplier's ineligibility, if such information is available.

(5) The debarment, suspension, or ineligibility of a supplier does not, of itself, affect the rights and obligations of the parties to any valid, pre-existing contract. The Postal Service may terminate for default a contract with a supplier that is debarred, suspended, or determined to be ineligible. Contracting officers may not add new work to any contract with a supplier that is debarred, suspended, or determined to be ineligible by supplemental agreement, by exercise of an option, or otherwise (unless the work is classified as an insignificant or significant minor service change to a mail transportation contract), except with the approval of the vice president, Supply Management, or designee.

(e) *Causes for debarment*—(1) The vice president, Supply Management, with the concurrence of the General Counsel, may debar a supplier, including its affiliates, for cause such as the following:

(i) Conviction of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts, or in the performance of a contract or subcontract.

(ii) Conviction under a Federal antitrust statute arising out of the submission of bids or proposals.

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.

(iv) Violation of a Postal Service contract so serious as to justify debarment, such as willful failure to perform a Postal Service contract in accordance with the specifications or within the time limit(s) provided in the contract; a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Postal Service contracts occurring within a reasonable period of time preceding the determination to debar (except that failure to perform or unsatisfactory performance caused by acts beyond the control of the supplier may not be considered a basis for debarment); violation of a contractual provision against contingent fees; or acceptance of a contingent fee paid in violation of a contractual provision against contingent fees.

(v) Any other offense indicating a lack of business integrity or business honesty.

(vi) Any other cause of a serious and compelling nature that debarment is warranted.

(2) The existence of a conviction in paragraph (e)(1)(i) or (ii) of this section can be established by proof of a conviction in a court of competent jurisdiction. If appeal taken from such conviction results in a reversal of the conviction, the debarment may be removed upon the request of the supplier, unless another cause or another basis for debarment exists.

(3) The existence of any of the other causes in paragraphs (e)(1)(iii), (iv),(v), or (vi) of this section can be established by a preponderance of the evidence, either direct or indirect, in the judgment of the vice president of Supply Management.

(4) The criminal, fraudulent, or improper conduct of an individual may be imputed to the firm with which he or she is or has been connected when an impropriety was committed. Likewise, when a firm is involved in criminal, fraudulent, or other improper conduct, any person who participated in, knew of, or had reason to know of the impropriety may be debarred.

(5) The fraudulent, criminal, or other improper conduct of one supplier participating in a joint venture or similar arrangement may be imputed to other participating suppliers if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the supplier. Acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval, or acquiescence.

(f) *Mitigating factors*—(1) The existence of any cause for debarment does not necessarily require that a supplier be debarred. The decision to debar is within the discretion of the vice president, Supply Management, with the concurrence of the General Counsel, and must be made in the best interest of the Postal Service. The following factors may be assessed in determining the seriousness of the offense, failure, or inadequacy of performance, and may be taken into account in deciding whether debarment is warranted:

(i) Whether the supplier had established written standards of conduct and had published internal control systems at the time of the activity that constitutes cause for debarment or had adopted such procedures prior to any Postal Service investigation of the activity cited as a cause for debarment.

(ii) Whether the supplier brought the activity cited as a cause for debarment to the attention of the Postal Service in a prompt, timely manner.

(iii) Whether the supplier promptly and fully investigated the circumstances involving debarment and, if so, made the full results of the investigation available to appropriate officials of the Postal Service.

(iv) Whether the supplier cooperated fully with the Postal Service during its investigation into the matter.

(v) Whether the supplier paid or agreed to pay all criminal, civil, and administrative liability and other costs arising out of the improper activity, including any investigative or administrative costs incurred by the Postal Service, and made or agreed to make full restitution.

(vi) Whether the supplier took appropriate disciplinary action against the individual(s) responsible for the activity that could cause debarment.

(vii) Whether the supplier implemented and/or agreed to implement remedial measures,

including those identified by the Postal Service.

(viii) Whether the supplier instituted and/or agreed to institute new and/or revised review and control procedures and ethics programs.

(ix) Whether the supplier had adequate time to eliminate circumstances within the supplier's organization that could lead to debarment.

(x) Whether the supplier's senior officers and mid-level management recognize and understand the seriousness of the misconduct giving rise to debarment.

(2) The existence or nonexistence of mitigating factors or remedial measures such as those above is not determinative whether or not a supplier should be debarred. If a cause for debarment exists, the supplier has the burden of demonstrating, to the satisfaction of the vice president, Supply Management that debarment is not warranted or necessary.

(g) *Period of debarment*—(1) When an applicable statute, executive order, or controlling regulation of other agencies provides a specific period of debarment, that period applies. In other cases, debarment by the Postal Service should be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment should not exceed three years. When debarment for an additional period is deemed necessary, notice of the proposed additional period of debarment must be furnished to the supplier as in the case of original debarment.

(2) Except as precluded by an applicable statute, executive order, or controlling regulation of another agency, debarment may be removed or the period may be reduced by the vice president, Supply Management when requested by the debarred supplier and when the request is supported by a reasonable justification, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The vice president, Supply Management may, at his or her discretion, deny any request or refer it to the Judicial Officer for a hearing and for findings of fact, which the vice president, Supply Management will consider when deciding the matter. When a debarment is removed or the debarment period is reduced, the vice president, Supply Management must state in writing the reason(s) for the removal of the debarment or the reduction of the period of debarment.

(h) *Procedural requirements for debarment*—(1) After securing the concurrence of the General Counsel, the vice president, Supply Management will initiate a debarment proceeding by sending the supplier a written notice of proposed debarment. The notice will be served by sending it to the last known address of the supplier by Certified Mail, return receipt requested. A copy of the notice will be furnished to the Office of Inspector General. The notice will state that debarment is being considered; the reason(s) for the proposed debarment; the anticipated period of debarment and the proposed effective date; and that, within thirty days of the notice, the supplier may submit, in person or in writing, or through a representative, information and argument in opposition to the proposed debarment. In the event a supplier does not submit information or argument in opposition to the proposed debarment to the vice president, Supply Management within the time allowed, the debarment will become final with no further review or appeal.

(2) If the proposed debarment is based on a conviction or civil judgment, the vice president, Supply Management, with the concurrence of the General Counsel, may decide whether debarment is merited based on the conviction or judgment, including any information received from the supplier. If the debarment is based on other circumstances or if there are questions regarding material facts, the vice president, Supply Management may seek additional information from the supplier and/or other persons, and may request the Judicial Officer to hold a fact-finding hearing on such matters. The hearing will be governed by rules of procedure promulgated by the Judicial Officer. The vice president, Supply Management may reject any findings of fact, in whole or in part, when they are clearly erroneous.

(3) When the vice president, Supply Management proposes to debar a supplier already debarred by another government agency for a period concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of evidence, facts, and proceedings before the other agency, upon any additional facts the Postal Service deems relevant, or on the decision of another government agency. In such cases, the findings of facts by another government agency may be considered as established, but, within thirty days of the notice of proposed debarment, the supplier may submit, in person or in writing, or through a representative, any additional facts, information, or argument to the vice president, Supply Management, and to explain why debarment by the Postal Service should not be imposed.

(4) Questions of fact to be resolved by a hearing before the Judicial Officer will be based on the preponderance of the evidence.

(5) After consideration of the circumstances and any information and argument submitted by the supplier, the vice president, Supply Management, with the concurrence of the General Counsel, will issue a written decision regarding whether the supplier is debarred, and, if so, for the period of debarment. The decision will be mailed to the supplier by Certified Mail, return receipt requested. A copy of the decision will be furnished to the Office of the Inspector General. The decision will be final and binding, unless the decision was procured by fraud or other criminal misconduct, or the decision was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

(i) *Causes for suspension.* The vice president, Supply Management, may suspend any supplier, including any of its affiliates:

(1) If the supplier commits, is indicted for, or is convicted of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a government contract, violates a Federal antitrust statute arising out of the submission of bids and proposals, or commits or engages in embezzlement, theft, forgery, bribery, falsification or destruction of records, or receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty;

(2) For any other cause of such serious and compelling nature that suspension is warranted; or

(3) If the Postal Service has notified a supplier of its proposed debarment under this Part.

(j) *Period of suspension.* A suspension will not exceed one year in duration, except a suspension may be extended for reasonable periods of time beyond one year by the vice president, Supply Management. The termination of a suspension will not prejudice the Postal Service's position in any debarment proceeding. A suspension will be superseded by a decision rendered by the vice president, Supply Management, under paragraph (h)(5) of this section.

(k) *Procedural requirements for suspension*—(1) The vice president, Supply Management will notify a supplier of a suspension or an extension of a suspension and the reason(s) for the suspension or extension in writing sent

to the supplier by Certified Mail, return receipt requested, within ten days after the effective date of the suspension or extension. A copy of the notice will be furnished to the Office of the Inspector General.

(2) The notice will state the cause(s) for the suspension or extension.

(3) Within thirty days of notice of suspension or an extension, a supplier may submit to the vice president, Supply Management, in writing, any information or reason(s) the supplier believes makes a suspension or an extension inappropriate, and the vice president, Supply Management, in consultation with the General Counsel, will consider the supplier's submission, and, in their discretion, may revoke a suspension or an extension of a suspension. If a suspension or extension is revoked, the revocation will be in writing and a copy of the revocation will be sent to the supplier by Certified Mail, return receipt requested. A copy of the revocation will be furnished to the Office of the Inspector General.

Stanley F. Mires,

Chief Counsel, Legislative.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0612243162–7541–02; I.D. 032607A]

RIN 0648–AU77

Fisheries Off West Coast States; Highly Migratory Species Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement daily bag limits for sport-caught albacore tuna (*Thunnus alalunga*) and bluefin tuna (*Thunnus orientalis*) in the Exclusive Economic Zone (EEZ) off California under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). This final rule is implemented as a conservation measure as part of the 2007–2009 biennial management cycle as established in the HMS FMP Framework provisions for changes to routine management measures.

DATES: This final rule is effective November 14, 2007.

ADDRESSES: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 4213.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, 760–431–9440, ext. 303.

SUPPLEMENTARY INFORMATION: On April 7, 2004, NMFS published a final rule to implement the HMS FMP (69 FR 18444) that codified annual specification guidelines at 50 CFR 660.709. These guidelines establish a process for the Pacific Fishery Management Council (Council) to take final action at its regularly-scheduled November meeting on any necessary harvest guideline, quota, or other management measure and recommend any such action to NMFS. At their November 12–17, 2006, meeting, the Council adopted a recommendation to establish daily bag limits for sport-caught albacore and bluefin tuna harvested in the EEZ off of California as a routine management measure for the 2007–2009 biennial management cycle. Based in part on the Council's recommendation, NMFS published a proposed rule on June 27, 2007, to establish daily bag limits for albacore and bluefin tuna harvested by recreational fishing in the U.S. EEZ off the coast of California (72 FR 35213).

NMFS is implementing this final rule pursuant to procedures established at 50 CFR 660.709(a)(4) of the implementing regulations for the HMS FMP. This final rule establishes a daily bag limit of 10 albacore tuna harvested by recreational fishing in the U.S. EEZ south of Point Conception (34° 27′ N. latitude) to the U.S.-Mexico border and a daily bag limit of 25 albacore tuna harvested by recreational fishing in the U.S. EEZ north of Point Conception to the California-Oregon border. This rule also establishes a daily bag limit of 10 bluefin tuna harvested by recreational fishing in the U.S. EEZ off the entire California coast. The two bag limits for albacore tuna are intended to accommodate differences in fishing opportunity in the two regions south and north of Point Conception. The 25 fish albacore tuna bag limit north of Point Conception is consistent with the current albacore tuna bag limit established by the State of Oregon for recreational fisheries in its waters and recognizes the more frequent weather-related loss of fishing opportunity in these waters compared to waters south of Point Conception.

California State regulations allow, by special permit, the retention of up to three daily bag limits for a trip occurring over multiple, consecutive days. California State regulations also allow for two or more persons angling for finfish aboard a vessel in ocean waters off California to continue fishing until boat limits are reached. NMFS and the Council consider these additional state restrictions to be consistent with Federal regulations implementing the HMS FMP, including this final rule. The final rule has been modified to clarify that recreational fisherman are generally subject to the same daily bag limits (10 or 25 albacore tuna south or north of Point Conception; 10 bluefin tuna off California) regardless of the number of days a fishing trip lasts unless operating under a California multi-day possession permit, in which case the daily bag limits may be multiplied pursuant to the restrictions of that program. Language has also been added to the final rule to clarify that a fisherman must comply with the most strict bag limit applicable to all areas fished during a given trip (e.g., if any part of a fishing trip takes place in the EEZ south of Point Conception, the 10–albacore bag limit applies even if the port of departure and landing or fishing takes place north of Point Conception).

The designation of paragraphs in 50 CFR 660.721 has been revised from the proposed rule to reduce complexity and make the regulations easier to read.

This final rule will stay in effect until such time as the Council and/or NMFS proposes further modifications as part of the HMS FMP biennial management cycle process. The State of California has informed NMFS that it intends to implement companion regulations to impose daily albacore and bluefin bag limits applicable to recreational angling and possession of fish in state waters (0–3 nm).

Comments and Responses

During the comment period for the proposed rule, NMFS received two comments.

Comment 1: The Science and Policy Coordinator for the Tag-A-Giant Foundation wrote in support of the proposed rule to implement a bag limit for Pacific bluefin tuna off the California coast but requested that NMFS reduce the bag limit from the proposed 10 fish per day to six fish per day. The stated rationale for the reduced daily bag limit request was to prevent expansion of the recreational fishery and potential overfishing that could result. The Coordinator also requested the daily bag limit be consistently applied in federal waters off the coasts of Oregon and Washington as well given the documented presence of bluefin tuna in

these waters, particularly during El Nino years.

Response: Establishing a six fish per day bag limit is unnecessary given the very minor catch of bluefin tuna in the recreational fisheries of all three West Coast states. Based on the best available science, bluefin tuna populations in the North Pacific Ocean (NPO) are not experiencing overfishing nor are they overfished. NMFS is involved in cooperative research and monitoring efforts for the NPO populations of bluefin tuna and will, in conjunction with the Pacific Council, take necessary steps in the future to implement appropriate conservation measures if warranted, including the potential for additional regulations to address both commercial and recreational fisheries impacts. In a similar vein, expanding the daily bluefin tuna bag limit to all three West Coast states is unnecessary based on the limited window of recreational catch and effort of bluefin tuna in Federal waters off Oregon and Washington.

Comment 2: The Manager of the Marine Resources Program for the Oregon Department of Fish and Wildlife wrote in support of the proposed rule stating that the dual limit for tuna off California would make the limit off northern California consistent with the limit off Oregon.

Response: The current Oregon daily bag limit is an aggregate of 25 fish of offshore pelagic species, which includes all the species of tunas found to occur in Oregon waters. NMFS hereby implements daily bag limits that are geographically consistent thereby facilitating more efficient and enforceable regulations.

Classification

The Administrator, Southwest Region, NMFS, determined that the FMP regulation is necessary for the conservation and management of the U.S. West Coast Fisheries for Highly Migratory Species and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 9, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. A new paragraph (qq) is added to section 660.705 to read as follows:

§ 660.705 Prohibitions.

* * * * *

(qq) Take and retain, possess on board, or land, fish in excess of any bag limit specified in § 660.721.

■ 3. Subpart K is amended by adding a new section 660.721 to read as follows:

§ 660.721 Recreational fishing bag limits.

This section applies to recreational fishing for HMS management unit species in the U.S. EEZ off the coast of California, Oregon, and Washington and in the adjacent high seas areas. In addition to individual fishermen, the operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag limits of this section are not exceeded. The bag limits of this section apply on the basis of each 24-hour period at sea, regardless of the number of trips per day. The provisions of this section do not authorize any person to take more than one daily bag limit of fishing during one calendar day. Federal recreational HMS regulations are not intended to supersede any more restrictive state recreational HMS regulations relating to federally-managed HMS. The bag limits include fish taken in both state and Federal waters.

(a) *Albacore Tuna Daily Bag Limit.* Except pursuant to a multi-day possession permit referenced in paragraph (c) of this section, a recreational fisherman may take or retain no more than:

(1) Ten albacore tuna if any part of the fishing trip occurs in the U.S. EEZ south of a line running due west true from 34°27′ N. latitude (at Point Conception, Santa Barbara County) to the U.S.-Mexico border.

(2) Twenty-five albacore tuna if any part of the fishing trip occurs in the U.S. EEZ north of a line running due west true from 34°27′ N. latitude (at Point Conception, Santa Barbara County) to the California-Oregon border.

(b) *Bluefin Tuna Daily Bag Limit.* A recreational fisherman may take or retain no more than 10 bluefin tuna in the U.S. EEZ off the coast of California.

(c) *Possession Limits.* If the State of California requires a multi-day possession permit for albacore or bluefin tuna harvested by a recreational fishing vessel and landed in California, aggregating daily trip limits for multi-day trips would be deemed consistent with Federal law.

(d) *Boat Limits* Off the coast of California, boat limits apply, whereby each fisherman aboard a vessel may continue to use recreational angling gear until the combined daily limits of HMS for all licensed and juvenile anglers aboard has been attained (additional state restrictions on boat limits may apply). Unless otherwise prohibited, when two or more persons are angling for HMS species aboard a vessel in the EEZ, fishing may continue until boat limits are reached.

[FR Doc. E7–20225 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0612242929–7490–02]

RIN 0648–AT93

Fisheries in the Western Pacific; Precious Corals Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Black coral resources in the Au'au Channel, Hawaii, have declined, possibly due to fishing pressure and an alien invasive soft coral. Current fishing regulations require minimum sizes for the harvest of living black coral colonies of 48 inches (122 cm) in height or one inch (2.54 cm) in stem diameter. Current regulations also exempt certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a smaller ¾ inch (1.91 cm) stem diameter by anyone who had reported black coral harvests to the State of Hawaii within

the five years prior to April 17, 2002. This final rule removes that exemption to reduce the impacts of fishing on Au'Au Channel black coral resources.

DATES: This final rule is effective November 14, 2007.

ADDRESSES: Copies of the fishery management plan (FMP) and the regulatory amendment may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, or via the World Wide Web at *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, (808) 944–2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the World Wide Web at the Office of the **Federal Register**: *www.gpoaccess.gov/fr/index.html.*

Background

The fishery for black coral in Federal waters around Hawaii is managed under the Fishery Management Plan for Precious Corals of the Western Pacific Region (FMP). The FMP was developed by the Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMP appear at subpart F of 50 CFR part 665 and subpart H of 50 CFR part 600.

Black corals are slow-growing and have low rates of natural mortality and recruitment. Natural populations are relatively stable and a wide range of age classes is generally present. These life-history characteristics (longevity and many year classes) have two important consequences with respect to exploitation: the response of the population to over-harvesting is drawn out over many years, and, because of the longevity of individuals and the associated slow rates of turnover in the populations, a long period of reduced fishing effort is required to restore the ability of the stock to produce at the maximum sustainable yield (MSY) if a stock has been over-exploited for several years.

Since the harvesting of Hawaii black coral began in the late 1950s, generally fewer than 10 fishermen have been active in the fishery at any time. Participation has probably been limited by the relatively small market for black coral in Hawaii, and by the dangers of fishing operations--harvesting is done by hand using scuba at depths as great as 230 ft (70 m). Most of the catch comes from the Au'Au Channel, south of Maui. Three commercial black coral harvesters are currently permitted by the State of Hawaii. Nonetheless, landings of black coral have increased over the past two decades, and landings from 1999–2005 were about 55,000 lb (25,000 kg), which is about 58 percent of the total catch since 1985.

Black coral biomass in the Au'Au Channel decreased almost 25 percent between 1976 and 2001. The causes of the reduction in biomass appear to be a combination of fishing pressure and the invasion of *Carijoa riisei*, an alien species of snowflake coral that smothers black coral colonies. The purpose of this final rule is to reduce the impacts of fishing on black coral resources in Federal waters of the Au'Au Channel. Surveys in 2006 suggest that the impact of *C. riisei* has stabilized or even improved, and monitoring will continue.

Current regulations at 50 CFR 665.86(b)(1) contain minimum size requirements for the harvest of black coral colonies in the Exclusive Economic Zone (EEZ) around Hawaii. Colonies must be 48 inches (122 cm) tall or one inch (2.54 cm) in stem diameter. The stem measurement must be made no closer than one inch (2.54 cm) from the top of the living holdfast. Current regulations also contain a provision at 50 CFR 665.86(b)(2) that exempts certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a ¾ inch (1.91 cm) stem diameter by anyone who reported harvests to the State of Hawaii within the five years prior to April 17, 2002. In response to concerns about the declining black coral resource, the Council recommended that NMFS amend the regulations governing the minimum size requirements for the black coral fishery in Hawaii to remove the stem diameter exemption. The Council prepared a regulatory amendment that contains background information on the issue, biological and economic impact analyses, and proposed regulatory changes. The revised regulations require that all harvested living black coral have a stem diameter of one inch (2.54 cm) or a height of 48 inches (122 cm).

Comments and Responses

On August 8, 2007, NMFS published in the **Federal Register** a proposed rule (72 FR 44074). The public comment period ended on September 6, 2007. NMFS received two public comments generally supporting the proposed rule.

Changes to the Proposed Rule

No changes to the proposed rule were made in this final rule.

Classification

The Regional Administrator, NMFS Pacific Islands Region, determined that this regulatory amendment is necessary for the conservation and management of the precious coral fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There are no recordkeeping or reporting requirements associated with this final rule.

Consistent with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA) for the regulatory amendment, as described below.

NMFS prepared this FRFA for the final rule. This FRFA incorporates the initial regulatory flexibility analysis (IRFA). The Classification section in the proposed rule included a detailed summary of the analysis contained in the IRFA, and that discussion is not repeated in its entirety here. The need for and the objectives of the action are explained in the preambles to the proposed rule and final rule, and are not repeated here. No comments were received on the IRFA, or on the economic impacts of the proposed rule.

There are three permitted vessels in the fishery, but only two have reported landings in Hawaii. These vessels are considered to be small entities under the Small Business Administration's definition of a small entity, i.e., they are engaged in the business of fish harvesting, are not independently-owned or operated, are not dominant in their field of operation, and have average annual gross receipts not in excess of $4 million. There are no disproportionate impacts between vessels participating in the fishery based on home port, vessel size, or gear type. The preferred Alternative 3, which would remove the exemption from minimum size requirements, and Alternative 6, which would implement a 5-year moratorium on black coral landings, would cause adverse economic impacts to the three entities that comprise the current fishery because they would not be allowed to harvest black coral in the way they are now allowed under the current management regime, thus potentially limiting their landings.

Because Federal waters account for approximately 15 percent of total landings, black coral harvesters would be impacted by an estimated reduction of approximately 15 percent gross receipts under Alternative 6, and could

be impacted by as much as a 15 percent reduction in gross receipts under the preferred Alternative 3. A 15 percent reduction would occur only if all corals currently harvested in Federal waters are harvested under the base requirement exemption. Otherwise, gross receipt reductions of 0 to 15 percent would occur under the preferred alternative depending upon the relative contribution of currently exempted products to the overall harvest. Excluding the no-action Alternative 1, which represents no change in net benefits to the affected small entities, all other alternatives considered (and described in detail in the IRFA accompanying the proposed rule) could yield potential beneficial impacts to the fishery because they eliminate certain size requirements for black coral harvest. However, these alternatives were not chosen since they would not be consistent with the objectives of the FMP and the MSA in that they would weaken the regulatory protection to black corals resources by removing size restrictions.

Small Business Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders was prepared that also serves as a small entity compliance guide, which will be sent to all holders of permits for the precious coral fishery. Copies of the small business compliance guide are available from William L. Robinson, NMFS Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or from the NMFS PIRO web site *www.fpir.noaa.gov*.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 9, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.86, paragraph (b) is revised to read as follows:

§ 665.86 Size restrictions.

* * * * *

(b) *Black coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

[FR Doc. E7–20228 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XD33

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), effective 1200 hrs, Alaska local time, October 10, 2007. This action is necessary to fully use the 2007 Pacific halibut prohibited species catch (PSC) limit specified for vessels using trawl gear in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 10, 2007, through 2400 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 25, 2007.

ADDRESSES: You may submit comments, identified by ''RIN 0648–XD33,'' by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- FAX to 907–586–7557, Attn: Ellen Sebastian
- Mail to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska
- Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Pacific halibut bycatch allowance specified for trawl gear in the GOA is 2,000 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007, as corrected by 72 FR 13217, March 21, 2007).

NMFS closed directed fishing for groundfish by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on October 8, 2007 (published on October 11, 2007 in the **Federal Register**). As of October 9, 2007, NMFS has determined that 330 metric tons of the 2007 Pacific halibut bycatch allowance for the fishery remains. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2007 Pacific halibut PSC limit specified for vessels using trawl gear in the GOA, NMFS is terminating the

previous closure and is opening directed fishing for groundfish by vessels using trawl gear in the GOA, effective 1200 hrs, A.l.t., October 10, 2007.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the groundfish fishery by vessels using trawl gear in the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 9, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for groundfish by vessels using trawl gear in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 25, 2007.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 9, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–5066 Filed 10–10–07; 2:01 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 198
Monday, October 15, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AL26

Emergency Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to allow donated annual leave in an agency's voluntary leave bank program to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors, and allow Judicial branch employees to donate and receive annual leave under an emergency leave transfer program.

DATES: Comments must be received on or before December 14, 2007.

ADDRESSES: Send or deliver written comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave Administration, Rm. 7H31, 1900 E Street, NW., Washington, DC 20415–8200; by fax at (202) 606–0824; or by e-mail to *pay-performance-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to allow donated annual leave in an agency's voluntary leave bank program to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors, and allow Judicial branch employees to donate and receive annual leave under an emergency leave transfer program, as provided by Public Law 109–229. These proposed regulations help standardize and simplify leave programs and policies to support consolidating agency human resources and payroll systems. They are also part of OPM's continuing efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disasters or emergencies as declared by the President. Finally, the emergency leave transfer regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

Transfer of Leave From Agency Leave Bank to Emergency Leave Transfer Program

Section 6391(d) of title 5, United States Code, permits a leave bank established under 5 U.S.C. 6362 to donate annual leave to an emergency leave transfer program. OPM's regulations currently permit an agency's leave bank to donate annual leave, with the concurrence of the agency's leave bank board, to an emergency leave transfer program administered by the leave bank's employing agency. In the aftermath of Hurricane Katrina, several agencies requested that we broaden this authority to allow an agency's leave bank to donate annual leave to an emergency leave transfer program administered by another agency. We believe a broader authority would have provided an immediate benefit to employees adversely affected by Hurricane Katrina and could benefit employees adversely affected by future major disasters or emergencies. Therefore, we propose adding a new section 5 CFR 630.1104 to permit an agency's leave bank to donate, with the concurrence of the agency's leave bank board, donated annual leave to an emergency leave transfer program administered by another agency during a Governmentwide transfer of emergency leave coordinated by OPM.

Procedures for Recrediting Unused Donated Annual Leave to Emergency Leave Donors

On January 5, 2005, to support the standardization of pay and leave policies under the e-Payroll initiative, OPM issued a comprehensive package of proposed regulations to revise the rules concerning the determination of official duty station for location-based pay entitlements, compensatory time off for religious observances, hours of work and alternative work schedules, and absence and leave (70 FR 1068). The proposed regulations are available at *http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_register&position=all&page=1068.* The 60-day comment period ended on March 7, 2005. We received two comments from an agency and a labor union on the proposed rules for recrediting unused donated annual leave to donors under the emergency leave transfer program.

Currently, when a disaster or emergency affecting an emergency leave recipient is terminated, any annual leave donated to an emergency leave transfer program must be returned to the emergency leave donors. The proposed regulations would eliminate the requirement to return unused leave to the donors if the number of hours of unused leave were less than the number of eligible donors. In effect, this would eliminate the requirement to return a fraction of an hour of leave. The labor union felt that employees who donate leave for the specific purpose of helping another employee should have that leave returned to them if unused. The agency recommended returning leave on a prorated basis to employees who donated more hours of leave instead of not returning any of the unused donated annual leave when there are more donors than hours remaining.

We believe the proposed amendment to eliminate the requirement to return unused leave to the donors if the number of hours of unused leave is less than the number of eligible numbers is consistent with OPM's current regulations at 5 CFR 630.911 for restoring transferred annual leave under the voluntary leave transfer program. The amount of unused donated annual leave returned to an employee would always be proportional to the amount of annual leave donated to the emergency leave transfer program by the employer for the emergency. Further, standardizing the administrative procedures of the emergency leave transfer program to be consistent with the procedures for the voluntary leave transfer program would greatly simplify the administration of this program. However, we are inviting further comments on this proposed policy change so we can fully consider all the

relevant issues before adopting any changes in the final regulations.

Participation of Judicial Branch Employees in an Emergency Leave Transfer Program

Public Law 109–229, effective May 31, 2006, amends 5 U.S.C. 6391 to authorize OPM to provide for the participation of Judicial branch employees in any emergency leave transfer program after consultation with the Administrative Office of the United States Courts. In the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct OPM to establish an emergency leave transfer program under which an employee may donate unused annual leave for transfer to employees of his or her agency or to employees in other agencies who are adversely affected by such disaster or emergency. After consultation with the Administrative Office of the U.S. Courts, OPM is amending 5 CFR part 630, subpart K, to allow for a Judicial branch entity to participate in any emergency leave transfer program established by OPM under 5 U.S.C. 6391.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM is proposing to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

Subpart K—Emergency Leave Transfer Program

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; 630.303 also issued under 5 U.S.C. 6133(a); 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

2. Part 630, subpart K is revised to read as follows:

Subpart K—Emergency Leave Transfer Program

Sec.

§ 630.1101 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement section 6391 of title 5, United States Code, and must be read together with section 6391. Section 6391 of title 5, United States Code, provides that in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management to establish an emergency leave transfer program under which an employee may donate unused annual leave for transfer to employees of his or her agency or to employees in other agencies who are adversely affected by such disaster or emergency.

(b) *Applicability.* This subpart applies to any individual who is defined as an ''employee'' in 5 U.S.C. 6331(1) and who is employed in—

(1) An Executive agency; or

(2) The Judicial branch.

(c) *Administration.* The head of each agency having employees subject to this subpart is responsible for the proper administration of this subpart. Each Federal agency must establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

§ 630.1102 Definitions.

In this subpart:

Agency means—

(1) An ''Executive agency,'' as defined in 5 U.S.C. 105; or

(2) A Judicial branch entity.

Disaster or emergency means a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees (e.g., loss of life or property, serious injury, or mental illness as a result of a direct threat to life or health).

Emergency leave donor means a current employee whose voluntary written request for transfer of annual leave to an emergency leave transfer program is approved by his or her employing agency.

Emergency leave recipient means a current employee for whom the employing agency has approved an application to receive annual leave under an emergency leave transfer program.

Emergency leave transfer program means a program established by OPM that permits Federal employees to transfer their unused annual leave to other Federal employees adversely affected by a disaster or emergency, as declared by the President.

Employee has the meaning given that term in 5 U.S.C. 6331(1).

Family member has the meaning given that term in § 630.902.

Leave year has the meaning given that term in § 630.201.

Paid leave status has the meaning given that term in § 630.902.

Transferred leave means donated leave credited to an approved emergency leave recipient's annual leave account.

§ 630.1103 Establishment of an emergency leave transfer program.

(a) When directed by the President, OPM will establish an emergency leave transfer program that permits an

employee to donate his or her accrued annual leave to employees of the same or other agencies who are adversely affected by a disaster or emergency as defined in § 630.1102. In certain situations, OPM may delegate to an agency the authority to establish an emergency leave transfer program.

(b) OPM will notify agencies of the establishment of an emergency leave transfer program for a specific disaster or emergency, as declared by the President. Once notified, each agency affected by the disaster or emergency is authorized to do the following:

(1) Determine whether, and how much, donated annual leave is needed by affected employees;

(2) Approve emergency leave donors and/or emergency leave recipients within the agency, as appropriate;

(3) Facilitate the distribution of donated annual leave from approved emergency leave donors to approved emergency leave recipients within the agency; and

(4) Determine the period of time for which donated annual leave may be accepted for distribution to approved emergency leave recipients.

§ 630.1104 Donations from a leave bank to an emergency leave transfer program.

A leave bank established under subchapter IV of chapter 63 of title 5, United States Code, and subpart J of part 630 may, with the concurrence of the leave bank board established under § 630.1003, donate annual leave to an emergency leave transfer program administered by the employing agency or another Executive branch agency or Judicial branch entity during a Governmentwide transfer of emergency leave coordinated by OPM.

§ 630.1105 Application to become an emergency leave recipient.

(a) An employee who has been adversely affected by a disaster or emergency may make written application to his or her employing agency to become an emergency leave recipient. If an employee is not capable of making written application, a personal representative may make written application on behalf of the employee.

(b) An employee who has a family member who has been adversely affected by a disaster or emergency also may make written application to his or her employing agency to become an emergency leave recipient. An emergency leave recipient may use donated annual leave to assist an affected family member, provided such family member has no reasonable access to other forms of assistance.

(c) For the purpose of this subpart, an employee is considered to be adversely affected by a major disaster or emergency if the disaster or emergency has caused the employee or a family member of the employee severe hardship to such a degree that his or her absence from work is required.

(d) The employee's application must be accompanied by the following information:

(1) The name, position title, and grade or pay level of the potential emergency leave recipient;

(2) A statement describing his or her need for leave from the emergency leave transfer program; and

(3) Any additional information that may be required by the potential leave recipient's employing agency.

(e) An agency may determine a time period by which employees must apply to become an emergency leave recipient after the occurrence of a disaster or emergency, as defined in 5 CFR 630.1102.

§ 630.1106 Approval of an application to become an emergency leave recipient.

An agency must review an application to become an emergency leave recipient under procedures the agency has established for the purpose of determining that a potential leave recipient is or has been affected by a disaster or emergency, as defined in 5 CFR 630.1102.

§ 630.1107 Notification of approval of an application.

If an employee's application to become an emergency leave recipient is approved, the agency must notify the employee (or his or her personal representative) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date established by the agency, if that date is later).

§ 630.1108 Disapproval of an application to become an emergency leave recipient.

If an employee's application to become an emergency leave recipient is not approved, the employing agency must notify the employee (or his or her personal representative who made application on the employee's behalf) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date established by the agency, if that date is later). The agency must give the reasons for its disapproval.

§ 630.1109 Use of available paid leave.

An approved emergency leave recipient is not required to exhaust his or her accrued annual and sick leave before receiving donated leave under the emergency leave transfer program.

§ 630.1110 Donating annual leave.

An employee may voluntarily submit a written request to his or her agency that a specified number of hours of his or her accrued annual leave, consistent with the limitations in § 630.1111, be transferred from his or her annual leave account to an emergency leave transfer program established under § 630.1103. An emergency leave donor may not donate annual leave for transfer to a specific emergency leave recipient under this subpart. Donated leave not used by an emergency leave recipient may be returned to the emergency leave donor(s) only as provided in § 630.1118.

§ 630.1111 Limitation on the amount of annual leave donated by an emergency leave donor.

(a) An emergency leave donor may not contribute less than 1 hour nor more than 104 hours of annual leave in a leave year to an emergency leave transfer program. Each agency may establish written criteria for waiving the 104-hour limitation on donating annual leave in a leave year.

(b) Annual leave donated to an emergency leave transfer program may not be applied against the limitations on the donation of annual leave under the voluntary leave transfer or leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

§ 630.1112 Limitation on the amount of donated annual leave received by an emergency leave recipient.

An emergency leave recipient may receive a maximum of 240 hours of donated annual leave at any one time from an emergency leave transfer program for each disaster or emergency.

§ 630.1113 Transferring donated annual leave between agencies.

(a) If an agency does not receive sufficient amounts of donated annual leave to meet the needs of approved emergency leave recipients within the agency, the agency may contact OPM to obtain assistance in receiving donated leave from other agencies. The agency must notify OPM of the total amount of donated annual leave needed for transfer to the agency's approved emergency leave recipients. OPM will solicit and coordinate the transfer of donated annual leave from other Federal agencies to affected agencies who may have a shortfall of donated annual leave. OPM will determine the period of time for which donations of accrued annual leave may be accepted for transfer to affected agencies.

(b) Each Federal agency OPM contacts for the purpose of providing donated annual leave to an agency in need must—

(1) Approve emergency leave donors under the conditions specified in §§ 630.1110 and 630.1111 and determine how much donated annual leave is available for transfer to an affected agency;

(2) Report the total amount of annual leave donated to the emergency leave transfer program to OPM; and

(3) When OPM has accepted the donated annual leave, debit the amount of annual leave donated to the emergency leave transfer program from each emergency leave donor's annual leave account.

(c) OPM will notify each affected agency of the aggregate amount of donated annual leave that will be credited to it for transfer to its approved emergency leave recipient(s). The affected agency will determine the amount of donated annual leave to be transferred to each emergency leave recipient (an amount that may vary according to individual needs).

(d) The affected agency must credit the annual leave account of each approved emergency leave recipient as soon as possible after the date OPM notifies the agency of the amount of donated annual leave that will be credited to the agency under paragraph (c) of this section.

§ 630.1114 Using donated annual leave.

(a) Any donated leave an emergency leave recipient receives from an emergency leave transfer program may be used only for purposes related to the disaster or emergency for which the emergency leave recipient was approved. Each agency is responsible for ensuring that leave donated under the emergency leave transfer program is used appropriately.

(b) Annual leave transferred under this subpart may be—

(1) Substituted retroactively for any period of leave without pay used because of the adverse effects of the disaster or emergency; or

(2) Used to liquidate an indebtedness incurred by the emergency leave recipient for advanced annual or sick leave used because of the adverse effects of the disaster or emergency. The agency may advance annual or sick leave, as appropriate (even if the employee has available annual and sick leave), so that the emergency leave recipient is not forced to use his or her accrued leave before donated annual leave becomes available.

§ 630.1115 Accrual of leave while using donated annual leave.

While an emergency leave recipient is using donated annual leave from an emergency leave transfer program, annual and sick leave continue to accrue to the credit of the employee at the same rate as if he or she were in a paid leave status under 5 U.S.C. chapter 63, subchapter I, and will be subject to the limitations imposed by 5 U.S.C. 6304(a), (b), (c), and (f) at the end of the leave year in which the transferred annual leave is received.

§ 630.1116 Limitations on the use of donated annual leave.

Donated annual leave transferred to a leave recipient under this subpart may not be—

(a) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552;

(b) Recredited to an employee who is reemployed by a Federal agency; or

(c) Used to establish initial eligibility for immediate retirement or acquire eligibility to continue health benefits into retirement under 5 U.S.C. 6302(g).

§ 630.1117 Termination of a disaster or emergency.

The disaster or emergency affecting the employee as an emergency leave recipient terminates—

(a) When the employing agency determines that the disaster or emergency has terminated;

(b) When the employee's Federal service terminates;

(c) At the end of the biweekly pay period in which the employee, or his or her personal representative, notifies the emergency leave recipient's agency that he or she is no longer affected by such disaster or emergency;

(d) At the end of the biweekly pay period in which the employee's agency determines, after giving the employee or his or her personal representative written notice and an opportunity to answer orally or in writing, that the employee is no longer affected by such disaster or emergency; or

(e) At the end of the biweekly pay period in which the employee's agency receives notice that OPM has approved an application for disability retirement for the emergency leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System, as appropriate.

§ 630.1118 Procedures for returning unused donated annual leave to emergency leave donors.

(a) When a disaster or emergency is terminated, any unused annual leave donated to an emergency leave transfer program must be returned to the emergency leave donors as provided in paragraph (b) of this section. The amount of remaining annual leave to be returned to each emergency leave donor must be proportional to the amount of annual leave donated by the employee to the emergency leave transfer program for such disaster or emergency. Annual leave donated to an emergency leave transfer program for a specific disaster or emergency may not be transferred to another emergency leave transfer program established for a different disaster or emergency.

(b) Each agency must establish procedures to return unused donated annual leave to emergency leave donors. Each agency must determine the amount of annual leave to be restored to each of the emergency leave donors who, on the date leave restoration is made, is employed by a Federal agency. If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave will be restored.

(c) At the election of the emergency leave donor, he or she may choose to have the agency restore unused donated annual leave by crediting the restored annual leave to the emergency leave donor's annual leave account in either the current leave year or the first pay period of the following leave year.

§ 630.1119 Protection against coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any emergency leave donor or emergency leave recipient for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term ''intimidate, threaten, or coerce'' includes promising to confer or conferring any benefit (such as appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

[FR Doc. E7–20205 Filed 10–12–07; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211 Trent 500, 700, and 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) provided by the aviation authority of the United Kingdom to identify and correct an unsafe condition on an aviation product. The MCAI states the following:

This action is necessary following the discovery of IP Compressor Rotor rear balance land cracking on an in-service Trent 800 engine. Stress analysis of the damaged rotor has shown a possible threat to the rotor integrity, the cracking therefore presents a potential unsafe condition.

We are proposing this AD to detect cracking on the intermediate pressure (IP) Compressor rotor rear balance land. IP compressor rotor rear balance land cracking can lead to uncontained failure of the rotor and damage to the airplane.

DATES: We must receive comments on this proposed AD by November 14, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.spinney@faa.gov;* telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0052, dated February 23, 2007 to correct an unsafe condition for the specified products. The EASA AD states:

This Airworthiness Directive requires inspections for cracks in the rear balance land of the IP Compressor Rotor. The inspections comprise an on-wing one-off inspection by borescope for RR Trent 800 engines which must be completed within a short timescale, and in-shop inspections to be completed at each opportunity for RR Trent 500, 700 and 800 engines (the in-shop inspection may be carried out in lieu of the on-wing inspection for the Trent 800 engines if it is accomplished within the timescale applicable to the on-wing inspection). This action is necessary following the discovery of IP Compressor Rotor rear balance land cracking on an in-service Trent 800 engine. Stress analysis of the damaged rotor has shown a possible threat to the rotor integrity, the cracking therefore presents a potential unsafe condition. The cause of the cracking is currently not fully understood but evidence suggests it relates to an unusual balance weight condition.

You may obtain further information by examining the EASA AD in the AD docket.

Relevant Service Information

RR has issued Alert Service Bulletin (ASB) RB.211–72–AF313, dated February 22, 2007 and ASB RB.211–72–AF260, Revision 1, dated January 17, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the EASA AD.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, they have notified us of the unsafe condition described in the EASA AD and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require inspecting the IP Compressor rotor rear balance land for cracks.

Costs of Compliance

We estimate that this proposed AD would affect about 110 engines installed on airplanes of U.S. registry. We also estimate that it would take about 3.5 work-hours per engine to perform the proposed actions and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $30,800. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Rolls-Royce plc: Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD.

Comments Due Date

(a) We must receive comments by November 14, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 560–61, 560A2–61, 768–60, 772–60, 772B–60, 772C–60, 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. These engines are installed on, but not limited to, Airbus A330, A340–500, A340–600, and Boeing 777 series airplanes.

Reason

(d) This action is necessary following the discovery of IP Compressor Rotor rear balance land cracking on an in-service Trent 800 engine. Stress analysis of the damaged rotor has shown a possible threat to the rotor integrity, the cracking therefore presents a potential unsafe condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

We are proposing this AD to detect cracking on the intermediate pressure (IP) Compressor rotor rear balance land. IP compressor rotor rear balance land cracking can lead to uncontained failure of the rotor and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions:

Inspection—On-Wing

(1) Applicable to RR Trent 800 engines not previously inspected per Rolls-Royce RB211 Propulsion System Alert Non Modification Service Bulletin RB.211–72–AF260, Revision 1, dated January 17, 2007 or original issue, dated October17, 2006: Within 400 flight cycles of the Effective Date of this AD inspect the IP Compressor rotor rear balance land for cracks in accordance with Rolls-Royce RB211 Propulsion System Alert Non Modification Service Bulletin RB.211–72–AF313, dated February 22, 2007 section 3 Accomplishment Instructions. Engines on which cracking is found should be rejected from service.

Inspection—In-Shop

(2) Applicable to RR Trent 500, 700 and 800 engines at each shop visit in which the engine is sufficiently disassembled to access the IP Compressor Module rear face: Inspect the IP Compressor rotor rear balance land for cracks in accordance with Rolls-Royce RB211 Propulsion System Alert Non Modification Service Bulletin RB.211–72–AF260, Revision 1, dated January 17, 2007, or original issue section 3 Accomplishment Instructions.

Other FAA AD Provisions

(f) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to EASA Airworthiness Directive 2007–0052, dated February 23, 2007, and Rolls-Royce plc Alert Service Bulletin (ASB) RB.211–72–AF313, dated February 22, 2007, and ASB RB.211–72–AF260, Revision 1, dated January 17, 2007, for related information.

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.spinney@faa.gov*; telephone (781) 238–7175; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 9, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–20242 Filed 10–12–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA 2007–28874]

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2005 including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2005. The preliminary theft data indicate that the vehicle theft rate for CY/MY 2005 vehicles (1.85 thefts per thousand vehicles) increased by 1.1 percent from the theft rate for CY/MY 2004 vehicles (1.83 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before December 14, 2007.

ADDRESSES: You may submit comments (identified by DOT Docket No. NHTSA–2007–28874) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of

the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2005 the most recent calendar year for which data are available.

In calculating the 2005 theft rates, NHTSA followed the same procedures it used in calculating the MY 2004 theft rates. (For 2004 theft data calculations, see 71 FR 59400, October 10, 2006.) As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources. The 2005 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2005 vehicles of that line stolen during calendar year 2005, by the total number of vehicles in that line manufactured for MY 2005, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2005 theft data show an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2004. The preliminary theft rate for MY 2005 passenger vehicles stolen in calendar year 2005 increased to 1.85 thefts per thousand vehicles produced, an increase of 1.1 percent from the rate of 1.83 thefts per thousand vehicles experienced by MY 2004 vehicles in CY 2004. For MY 2005 vehicles, out of a total of 233 vehicle lines, 24 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the 24 vehicle lines with a theft rate higher than 3.5826, 21 are passenger car lines, two are multipurpose passenger vehicle lines, and one is a light-duty truck line.

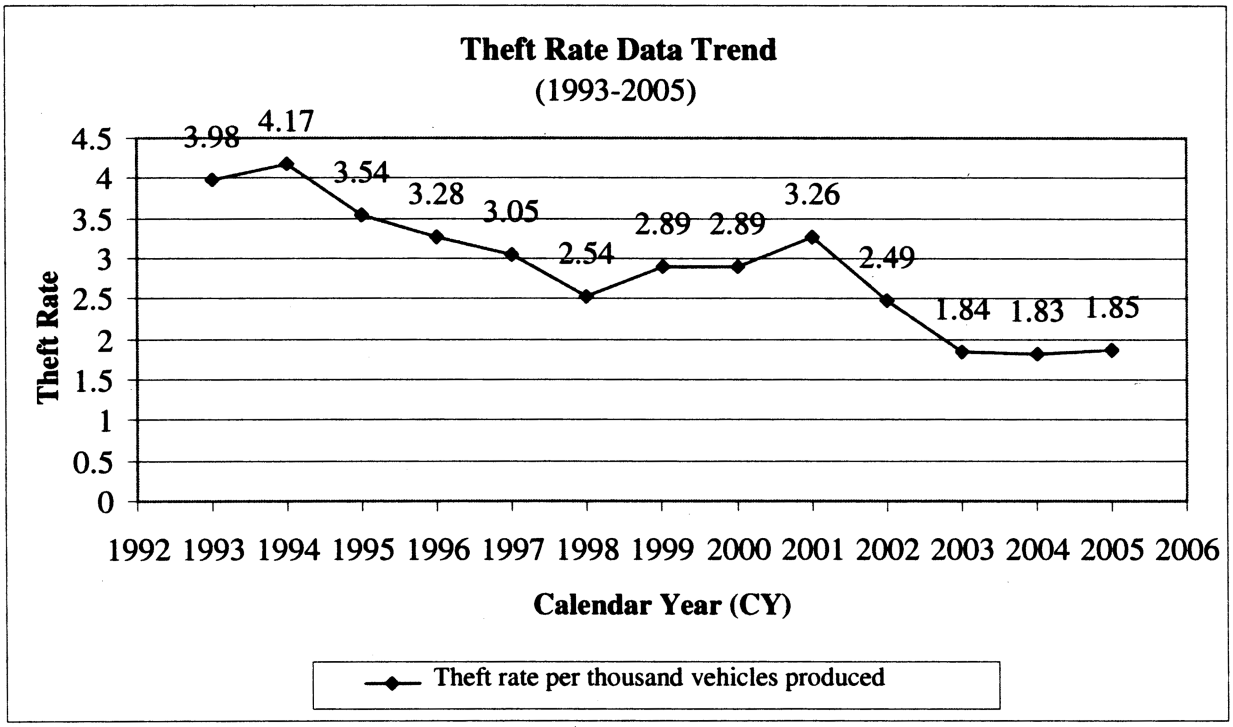

Figure 1: Theft Rate Data Trend (1993-2005)

In Table I, NHTSA has tentatively ranked each of the MY 2005 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2005 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2005

	Manufacturer	Make/model (line)	Thefts 2005	Production (mfr's) 2005	2005 Theft rate (per 1,000 vehicles produced)
1	TOYOTA	TOYOTA TUNDRA PICKUP	265	14,194	18.6699
2	SUZUKI	AERIO	77	11,804	6.5232
3	KIA	RIO	156	26,328	5.9253
4	MERCEDES BENZ	215 (CL–CLASS)	9	1,601	5.6215
5	JAGUAR	XKR	4	748	5.3476
6	GENERAL MOTORS	CHEVROLET MONTE CARLO	188	35,876	5.2403
7	MITSUBISHI	GALANT	150	28,808	5.2069
8	DAIMLERCHRYSLER	DODGE NEON	783	154,231	5.0768
9	DAIMLERCHRYSLER	DODGE MAGNUM	387	79,254	4.8830
10	DAIMLERCHRYSLER	CHRYSLER SEBRING	242	49,892	4.8505
11	DAIMLERCHRYSLER	DODGE STRATUS	452	94,735	4.7712
12	KIA	OPTIMA	145	31,362	4.6234
13	MITSUBISHI	LANCER	141	31,226	4.5155
14	NISSAN	SENTRA	519	116,354	4.4605
15	GENERAL MOTORS	CHEVROLET MALIBU	908	212,400	4.2750
16	TOYOTA	TOYOTA ECHO	43	10,540	4.0797
17	GENERAL MOTORS	PONTIAC GRAND AM	248	61,502	4.0324
18	TOYOTA	LEXUS GS	12	3,004	3.9947
19	SUZUKI	FORENZA	129	33,387	3.8638
20	NISSAN	INFINITI FX45	7	1,850	3.7838
21	GENERAL MOTORS	CHEVROLET CAVALIER	351	95,838	3.6624
22	HONDA	ACURA RSX	69	19,135	3.6060
23	KIA	SPECTRA	191	53,027	3.6019
24	HONDA	S2000	32	8,921	3.5870
25	MASERATI	SPYDER/F1	1	289	3.4602
26	GENERAL MOTORS	PONTIAC SUNFIRE	132	38,239	3.4520
27	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	114	33,498	3.4032
28	SUZUKI	VITARA/GRAND VITARA	81	24,542	3.3005
29	TOYOTA	TOYOTA MR2 SPYDER	3	912	3.2895
30	TOYOTA	LEXUS IS	20	6,343	3.1531
31	DAIMLERCHRYSLER	CHRYSLER 300	499	158,545	3.1474
32	SUZUKI	VERONA	23	7,409	3.1043
33	HYUNDAI	ACCENT	158	51,121	3.0907
34	GENERAL MOTORS	CHEVROLET AVEO	196	64,250	3.0506
35	HYUNDAI	TIBURON	46	15,100	3.0464
36	GENERAL MOTORS	CHEVROLET IMPALA	701	230,633	3.0395
37	NISSAN	350Z	82	27,146	3.0207
38	MITSUBISHI	ECLIPSE	25	8,471	2.9512
39	FORD MOTOR CO	LINCOLN LS	64	21,743	2.9435
40	GENERAL MOTORS	CHEVROLET COBALT	410	140,975	2.9083

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2005 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2005—Continued

	Manufacturer	Make/model (line)	Thefts 2005	Production (mfr's) 2005	2005 Theft rate (per 1,000 vehicles produced)
41	NISSAN	INFINITI QX56	36	12,666	2.8423
42	NISSAN	MAXIMA	209	73,931	2.8270
43	NISSAN	ALTIMA	1,035	368,779	2.8066
44	MAZDA	6	191	68,252	2.7985
45	SUZUKI	RENO	16	5,736	2.7894
46	TOYOTA	SCION XB	187	67,396	2.7746
47	SUBARU	IMPREZA	103	38,390	2.6830
48	GENERAL MOTORS	PONTIAC GRAND PRIX	284	107,972	2.6303
49	FORD MOTOR CO	FORD TAURUS	527	201,826	2.6112
50	FORD MOTOR CO	FORD FOCUS	637	245,780	2.5917
51	TOYOTA	TOYOTA CELICA	11	4,258	2.5834
52	BMW	M3	14	5,471	2.5589
53	GENERAL MOTORS	PONTIAC GTO	28	11,065	2.5305
54	ROLLS ROYCE	PHANTOM	1	399	2.5063
55	FORD MOTOR CO	FORD MUSTANG	362	145,599	2.4863
56	MITSUBISHI	OUTLANDER	36	14,983	2.4027
57	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	12	5,018	2.3914
58	NISSAN	INFINITI FX35	72	30,172	2.3863
59	DAIMLERCHRYSLER	JEEP WRANGLER	178	74,706	2.3827
60	GENERAL MOTORS	CADILLAC XLR	9	3,828	2.3511
61	BMW	6	25	10,636	2.3505
62	TOYOTA	TOYOTA COROLLA	864	368,744	2.3431
63	TOYOTA	SCION TC	146	62,321	2.3427
64	NISSAN	FRONTIER PICKUP	146	62,799	2.3249
65	MITSUBISHI	ENDEAVOR	46	20,871	2.2040
66	HYUNDAI	SONATA	175	79,781	2.1935
67	MAZDA	B SERIES PICKUP	12	5,686	2.1104
68	HYUNDAI	ELANTRA	277	132,495	2.0906
69	MITSUBISHI	MONTERO	8	3,829	2.0893
70	GENERAL MOTORS	PONTIAC G6	128	62,481	2.0486
71	NISSAN	XTERRA	113	55,179	2.0479
72	KIA	SEDONA VAN	156	76,527	2.0385
73	FORD MOTOR CO	FORD RANGER PICKUP	209	103,723	2.0150
74	VOLKSWAGEN	GOLF/GTI	29	14,447	2.0073
75	HONDA	CIVIC	577	288,917	1.9971
76	KIA	SORENTO	114	57,272	1.9905
77	MERCEDES BENZ	203 (C-CLASS)	139	70,818	1.9628
78	HONDA	ACURA TSX	70	35,836	1.9533
79	ISUZU	ASCENDER	14	7,219	1.9393
80	MAZDA	RX–8	34	17,608	1.9309
81	KIA	AMANTI	43	22,858	1.8812
82	TOYOTA	SCION XA	60	32,132	1.8673
83	TOYOTA	TOYOTA TACOMA PICKUP	283	151,776	1.8646
84	JAGUAR	XJ8/XJ8L	8	4,330	1.8476
85	NISSAN	INFINITI G35	120	65,227	1.8397
86	JAGUAR	S–TYPE	25	13,629	1.8343
87	MAZDA	3	158	86,184	1.8333
88	DAIMLERCHRYSLER	CHRYSLER PT CRUISER	240	133,335	1.8000
89	TOYOTA	LEXUS SC	16	9,019	1.7740
90	NISSAN	INFINITI Q45	3	1,712	1.7523
91	NISSAN	PATHFINDER	143	82,667	1.7298
92	MERCEDES BENZ	208 (CLK–CLASS)	37	21,724	1.7032
93	SUBARU	BAJA	14	8,244	1.6982
94	AUDI	A4/A4 QUATTRO/S4/S4 AVANT	80	47,470	1.6853
95	GENERAL MOTORS	CHEVROLET TRAILBLAZER	311	184,671	1.6841
96	TOYOTA	TOYOTA CAMRY/SOLARA	732	437,173	1.6744
97	NISSAN	QUEST VAN	60	35,913	1.6707
98	GENERAL MOTORS	PONTIAC AZTEK	17	10,197	1.6672
99	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	356	214,714	1.6580
100	MERCEDES BENZ	170 (SLK–CLASS)	17	10,310	1.6489
101	GENERAL MOTORS	BUICK CENTURY	65	40,051	1.6229
102	FORD MOTOR CO	FORD EXPLORER	317	196,740	1.6113
103	FORD MOTOR CO	MERCURY SABLE	58	36,134	1.6051
104	SAAB	9–2X	9	5,713	1.5754
105	HONDA	ACCORD	576	371,940	1.5486
106	FORD MOTOR CO	FORD EXPLORER SPORT TRAC	83	53,640	1.5474
107	HONDA	ACURA 3.2 TL	125	82,497	1.5152

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2005 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2005—Continued

	Manufacturer	Make/model (line)	Thefts 2005	Production (mfr's) 2005	2005 Theft rate (per 1,000 vehicles produced)
108	GENERAL MOTORS	CHEVROLET COLORADO	206	136,994	1.5037
109	BMW	3	88	58,554	1.5029
110	BMW	5	42	28,346	1.4817
111	FORD MOTOR CO	MERCURY MOUNTAINEER	48	32,416	1.4808
112	GENERAL MOTORS	SATURN ION	104	71,021	1.4644
113	DAIMLERCHRYSLER	CHRYSLER CROSSFIRE	36	24,679	1.4587
114	GENERAL MOTORS	GMC ENVOY	102	70,105	1.4550
115	KIA	SPORTAGE	35	24,351	1.4373
116	GENERAL MOTORS	GMC CANYON PICKUP	56	39,149	1.4304
117	FORD MOTOR CO	LINCOLN TOWN CAR	67	46,853	1.4300
118	MERCEDES BENZ	129 (SL–CLASS)	15	10,586	1.4170
119	NISSAN	MURANO	102	72,482	1.4072
120	TOYOTA	TOYOTA MATRIX	99	72,719	1.3614
121	HYUNDAI	SANTA FE	100	73,979	1.3517
122	HYUNDAI	XG300	27	20,099	1.3434
123	GENERAL MOTORS	PONTIAC VIBE	95	71,357	1.3313
124	GENERAL MOTORS	CADILLAC DEVILLE	76	57,246	1.3276
125	VOLKSWAGEN	JETTA	116	87,710	1.3225
126	AUDI	A8	7	5,336	1.3118
127	VOLKSWAGEN	PHAETON	1	768	1.3021
128	MAZDA	TRIBUTE	68	52,267	1.3010
129	JAGUAR	VANDEN PLAS/SUPER V8	4	3,075	1.3008
130	FORD MOTOR CO	FORD CROWN VICTORIA	24	18,754	1.2797
131	FORD MOTOR CO	FORD FREESTAR VAN	92	72,690	1.2656
132	GENERAL MOTORS	CHEVROLET ASTRO VAN	29	23,439	1.2373
133	DAIMLERCHRYSLER	CHRYSLER PACIFICA	146	118,329	1.2338
134	GENERAL MOTORS	PONTIAC BONNEVILLE	26	21,519	1.2082
135	GENERAL MOTORS	CADILLAC CTS	74	61,323	1.2067
136	BMW	7	9	7,495	1.2008
137	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND CARAVAN	440	367,439	1.1975
138	TOYOTA	TOYOTA 4RUNNER	127	106,810	1.1890
139	DAIMLERCHRYSLER	DODGE VIPER	2	1,692	1.1820
140	HYUNDAI	TUCSON	71	61,346	1.1574
141	ASTON MARTIN	DB9	1	874	1.1442
142	GENERAL MOTORS	GMC SAFARI VAN	5	4,441	1.1259
143	FORD MOTOR CO	FORD FIVE HUNDRED	109	97,689	1.1158
144	VOLVO	V70	9	8,070	1.1152
145	MERCEDES BENZ	220 (S–CLASS)	13	11,831	1.0988
146	FORD MOTOR CO	FORD THUNDERBIRD	10	9,189	1.0883
147	BMW	X3	31	28,657	1.0818
148	TOYOTA	LEXUS LS	31	29,049	1.0672
149	GENERAL MOTORS	CHEVROLET EQUINOX	192	183,758	1.0449
150	FORD MOTOR CO	FORD ESCAPE	252	243,658	1.0342
151	DAIMLERCHRYSLER	JEEP LIBERTY	178	173,110	1.0282
152	TOYOTA	LEXUS ES	83	80,735	1.0281
153	TOYOTA	LEXUS GX	28	27,260	1.0271
154	TOYOTA	TOYOTA AVALON	59	57,577	1.0247
155	GENERAL MOTORS	CHEVROLET CORVETTE	34	33,810	1.0056
156	GENERAL MOTORS	BUICK LESABRE	105	105,985	0.9907
157	TOYOTA	LEXUS RX	94	96,140	0.9777
158	PORSCHE	BOXSTER	6	6,142	0.9769
159	GENERAL MOTORS	CHEVROLET VENTURE VAN	24	25,341	0.9471
160	ROLLS ROYCE	BENTLEY CONTINENTAL	3	3,176	0.9446
161	VOLVO	S40	24	25,722	0.9331
162	TOYOTA	TOYOTA RAV4	75	82,037	0.9142
163	BMW	Z4	10	11,079	0.9026
164	HONDA	ELEMENT	47	52,440	0.8963
165	FORD MOTOR CO	MERCURY MARINER	29	32,734	0.8859
166	GENERAL MOTORS	SATURN LS	6	6,790	0.8837
167	FORD MOTOR CO	MERCURY GRAND MARQUIS	61	69,862	0.8731
168	TOYOTA	TOYOTA HIGHLANDER	113	130,146	0.8683
169	GENERAL MOTORS	BUICK PARK AVENUE	8	9,282	0.8619
170	GENERAL MOTORS	SATURN VUE	56	65,105	0.8601
171	VOLKSWAGEN	PASSAT	30	35,149	0.8535
172	PORSCHE	911	7	8,391	0.8342
173	GENERAL MOTORS	CADILLAC STS	31	37,226	0.8328
174	TOYOTA	TOYOTA SIENNA VAN	144	172,999	0.8324

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2005 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2005—Continued

	Manufacturer	Make/model (line)	Thefts 2005	Production (mfr's) 2005	2005 Theft rate (per 1,000 vehicles produced)
175	GENERAL MOTORS	BUICK LACROSSE/ALLURE	68	81,894	0.8303
176	LAND ROVER	FREELANDER	2	2,441	0.8193
177	MAZDA	MPV VAN	15	18,902	0.7936
178	HONDA	ACURA 3.5 RL	17	21,526	0.7897
179	VOLKSWAGEN	NEW BEETLE	27	34,410	0.7847
180	AUDI	A6/A6 QUATTRO/S6/S6 AVANT	12	15,432	0.7776
181	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY	195	253,162	0.7703
182	GENERAL MOTORS	BUICK RENDEZVOUS	42	54,775	0.7668
183	VOLVO	XC90	33	43,213	0.7637
184	FORD MOTOR CO	MERCURY MONTEREY VAN	5	6,703	0.7459
185	MERCEDES BENZ	210 (E-CLASS)	30	40,445	0.7417
186	VOLVO	S80	8	10,918	0.7327
187	GENERAL MOTORS	BUICK RAINIER	10	13,648	0.7327
188	VOLVO	S60	15	23,029	0.6514
189	BMW	MINI COOPER	30	47,444	0.6323
190	HONDA	CR–V	88	144,472	0.6091
191	SAAB	9–3	13	21,433	0.6065
192	LOTUS	ELISE	2	3,320	0.6024
193	SUBARU	LEGACY/OUTBACK	21	34,944	0.6010
194	AUDI	ALLROAD QUATTRO	2	3,420	0.5848
195	HONDA	ACURA MDX	35	60,287	0.5806
196	HONDA	PILOT	81	142,118	0.5699
197	GENERAL MOTORS	CHEVROLET UPLANDER VAN	30	52,713	0.5691
198	GENERAL MOTORS	CADILLAC SRX	13	23,498	0.5532
199	FORD MOTOR CO	FORD FREESTYLE	40	75,643	0.5288
200	HONDA	ODYSSEY VAN	85	161,742	0.5255
201	FORD MOTOR CO	FORD GT	1	1,907	0.5244
202	SAAB	9–7X	1	1,999	0.5003
203	MAZDA	MX–5 MIATA	2	4,135	0.4837
204	SUBARU	FORESTER	24	50,942	0.4711
205	FORD MOTOR CO	MERCURY MONTEGO	13	28,517	0.4559
206	GENERAL MOTORS	PONTIAC MONTANA VAN	14	31,583	0.4433
207	TOYOTA	TOYOTA PRIUS	46	121,020	0.3801
208	SUBARU	OUTBACK	29	79,980	0.3626
209	JAGUAR	X–TYPE	4	11,299	0.3540
210	GENERAL MOTORS	SATURN RELAY	6	17,794	0.3372
211	SAAB	9–5	2	6,137	0.3259
212	VOLVO	V50	2	6,909	0.2895
213	GENERAL MOTORS	BUICK TERRAZA VAN	2	19,848	0.1008
214	MASERATI	GRANSPORT	0	490	0.0000
215	MASERATI	QUATTROPORTE	0	1,311	0.0000
216	HONDA	ACURA NSX	0	249	0.0000
217	ASTON MARTIN	VANQUISH	0	165	0.0000
218	AUDI	TT	0	3,375	0.0000
219	ROLLS ROYCE	BENTLEY ARNAGE	0	361	0.0000
220	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE	0	854	0.0000
221	GENERAL MOTORS	CADILLAC LIMOUSINE	0	472	0.0000
222	FERRARI	MARANELLO/F1	0	235	0.0000
223	FERRARI	SCAGLIETTI/F1	0	228	0.0000
224	FERRARI	SPIDER/F1	0	1,093	0.0000
225	GENERAL MOTORS	CHEVROLET CLASSIC	0	83,060	0.0000
226	GENERAL MOTORS	GMC K2500	0	51	0.0000
227	HONDA	INSIGHT	0	591	0.0000
228	JAGUAR	XJR	0	741	0.0000
229	JAGUAR	XK8	0	1,760	0.0000
230	NISSAN	ARMADA	0	34,803	0.0000
231	NISSAN	TITAN	0	77,628	0.0000
232	SPYKER	C8	0	7	0.0000
233	VOLVO	XC70	0	14,806	0.0000

Issued on: October 5, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 07–5022 Filed 10–12–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

RIN 1018–AV53

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2008 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is publishing migratory bird subsistence harvest regulations in Alaska for the 2008 season. This proposed rule establishes regulations that prescribe dates when harvesting of birds may occur, species that can be taken, and methods and means excluded from use. These regulations were developed under a Co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that go into effect on April 2, 2008, and expire on August 31, 2008.

DATES: Comments on the proposed subsistence harvest regulations for migratory birds in Alaska must be submitted by December 14, 2007.

ADDRESSES: You may submit comments on this proposed rule by any of the following methods:

1. *U.S. mail or hand delivery:* Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.
2. *Fax:* (907) 786–3306.
3. *E-mail: ambcc@fws.gov.*
4. *Federal e-rulemaking portal: http://www.regulations.gov.* Follow the instructions on the site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

How Do I Find the History of These Regulations?

Background information, including past events leading to this action, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history addressing conservation issues can be found in the following **Federal Register** notices: August 16, 2002 (67 FR 53511); July 21, 2003 (68 FR 43010); April 2, 2004 (69 FR 17318); April 8, 2005 (70 FR 18244); February 28, 2006 (71 FR 10404); and April 11, 2007 (72 FR 18318). These documents are readily available at *http://alaska.fws.gov/ambcc/regulations.htm.*

Why Is This Current Rulemaking Necessary?

This current rulemaking is necessary because the migratory bird harvest season is closed unless opened, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2007 to develop recommendations for changes effective for the 2008 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on August 1 and 2, 2007, and were approved.

This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during 2008. This rule lists migratory bird species that are proposed to be open or closed to harvest, as well as proposed season openings and closures by region.

How Will the Service Continue To Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Service has an emergency closure provision (§ 92.21), so that if any significant increases in harvest are documented for one or more species in a region, an emergency closure can be requested and implemented. Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands and in areas north and west of the Alaska Range (§ 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in § 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459.

In 2007, we have enacted the Alaska Department of Fish and Game's (ADF&G) request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village and Ferry, with a combined population of 2,812. These removed communities reduced the percentage of the State population included in the subsistence harvest to 13 percent.

Subsistence harvest has been monitored for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, e.g., Yukon/Kuskokwim Delta. Continuation of this monitoring enables tracking of any major changes or trends in levels of harvest and user participation after legalization of the harvest. The Office of Management and Budget (OMB) has approved the information collection and assigned OMB control number 1018–0124, which expires on January 31, 2010.

What Birds Will Be Open To Harvest in 2008?

At the request of the North Slope Borough Fish and Game Management Committee, the Co-management Council recommended continuing into 2008 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons inadvertently caught in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2008 pursuant to this provision. Individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. In

addition, the North Slope Borough has asked fishermen, through announcements on the radio and through personal contact, to report all entanglements of loons to better estimate the levels of injury or mortality caused by gill nets. In 2006, two yellow-billed loons were reported taken in fishing nets and an additional one was found alive in a net and released. This provision, to allow subsistence possession and use of yellow-billed loons caught in fishing gill nets, is subject to annual review and renewal by the SRC.

We are proposing to consolidate the lists of birds closed and open to harvest (currently in §§ 92.31 and 92.32, respectively) into one open list and to move this list to subpart C (permanent regulations at § 92.22). We would also add the following clarifying statement: ''You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed at the species level, all subspecies existing in Alaska are also open to harvest. All bird species *not* listed are closed to harvesting and egg gathering.'' We excluded some bird species from the list purely on the basis of current population concerns, and we will reopen the harvest of these species if their population status improves. This proposal was requested by the Executive Director of the Alaska Migratory Bird Co-management Council. By going from two bird lists, an open list and a closed list, to just an open list, we could save thousands of dollars per year. Up until now, we have been printing both lists in the **Federal Register** each year, at both the proposed and final rule stage. This action would also clarify and simplify the regulations as to which bird species can be legally harvested, eliminating the confusion caused by situations when birds are not listed anywhere but are illegal to harvest, such as all Passerines.

What Is Proposed for Change in the Region-Specific Regulations for 2008?

We are proposing to remove from the 2006–07 regulation the Special Area Closure in the Yukon/Kuskokwim Delta Region that included the goose colonies in Kokechik Bay, Tutakoke River, Kigigak Island Colony, Baird Peninsula, and Baird Island. This proposal was requested by the Association of Village Council Presidents. Removal of this Special Area Closure would make the regulation consistent with the Pacific Flyway recommendation to place the harvest of brant under a less restrictive status.

We are proposing to amend the migratory bird harvest seasons for the Kodiak Archipelago to extend the early season 10 days until June 30 for seabird harvesting (closed period would then be July 1–31), and remain the same for all other birds. This proposal was requested by the Kodiak Regional Advisory Council to allow for variations in the nesting phenology of seabirds, primarily to accommodate egg gathering on the later-nesting black-legged kittiwakes.

We are proposing to amend the migratory bird harvest seasons for the Northwest Arctic Region to move the seabird egg-gathering season start date from July 3 to May 20. This proposal was requested by the Maniilaq Association to accommodate harvesting of gull eggs, primarily glaucous, glaucous-winged, mew and Sabine's gulls. Gulls typically initiate egg laying earlier than other seabirds such as alcids.

We are proposing to add a special brant open season from June 20 through July 5 for the coastline surrounding Wainwright within the Southern Unit of the North Slope Region. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This proposal would allow for harvest of non-nesting, failed nesting, and sub-adult black brant migrating from western Alaska to their molting areas on the North Slope. This proposal was requested by the North Slope Borough Department of Wildlife Management to allow for the continuation of Wainwright's customary and traditional harvest of brant (non- or failed nesters and sub-adult) migrating to their molting areas. This would be a very limited harvest of migrating brant only, to be used for a traditional celebration after a successful whaling season.

Black brant (Niglingaq) are a very important subsistence resource to the Wainwright Inupiat. The most concentrated hunting for brant takes place along the beach as brant migrate in large flocks northward during the months of May and June. Often people hunting brant and eiders stay at traditional campsites along the coastline within a day's travel of Wainwright. One or several families set up tents on the sand or atop banks and may remain there for several days. Brant hunters may sit in driftwood blinds on the beach near camp if the birds are flying overhead, or they may go out onto the ice if birds are flying more offshore. Much of the brant harvest in June is in preparation for Nalukataq (blanket toss). Nalukataq is a traditional community feast and celebration for successful whaling crews, which is usually held mid-to-late June. At this celebration, one of the main courses served to the entire community and visiting guests is duck and geese soup. Black brant is one type of goose that is harvested specifically for the Nalukataq feast.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Required Determinations

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments regarding how we could make this rule easier to understand to: Office of

Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

OMB has determined that this document is not a significant rule subject to OMB review under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule does not provide for new or additional hunting opportunities, and therefore, will have minimal economic or environmental impact. This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: First, participants receive the consumptive value of the birds harvested; and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled ''Subsistence Food Harvests in Rural Alaska, and Food Safety Issues'' (August 13, 1996). Using data from Wolfe's paper and applying it to the areas that will be included in this process, we determined a maximum economic value of $6 million. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

(b) This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, and coordinate with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

(d) This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same national regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

(a) This rule will not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

(b) This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native non-profits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We have, however, received OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. The OMB control number for the information collection is 1018–0124, which expires on January 31, 2010. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism Effects

As discussed in the Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive

Order 13132. We worked with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant taking implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes and evaluated the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Prior to issuance of annual spring and summer subsistence regulations, we will comply with the requirments of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536; hereinafter the Act) to ensure that these regulations are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or destroy or adversely modify any designated critical habitats for such species, and that they are consistent with conservation programs for those species. Consultations under Section 7 of the Act conducted in connection with the environmental assessment for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the Section 7 consultation is a public document available for public inspection at the address indicated under the caption **ADDRESSES**.

National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2008 Spring/Summer Harvest,'' issued August 15, 2007. Copies are available from the address indicated under the caption **ADDRESSES**.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart C—General Regulations Governing Subsistence Harvest

2. In subpart C, add § 92.22 to read as follows:

§ 92.22 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included areas except Southeast Alaska, which is restricted to Glaucous-winged gull egg harvesting only. When birds are listed at the species level, all subspecies existing in Alaska are also open to harvest. All bird species not listed are closed to harvesting and egg gathering.

(a) Family Anatidae.

(1) Greater White-fronted Goose (*Anser albifrons*).

(2) Snow Goose (*Chen caerulescens*).

(3) Lesser Canada Goose (*Branta canadensis parvipes*).

(4) Taverner's Canada Goose (*Branta canadensis taverneri*).

(5) Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands.

(6) Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted.

(7) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.

(8) Tundra Swan (*Cygnus columbianus*)—except in Units 9(D) and 10.

(9) Gadwall (*Anas strepera*).

(10) Eurasian Wigeon (*Anas penelope*).

(11) American Wigeon (*Anas americana*).

(12) Mallard (*Anas platyrhynchos*).

(13) Blue-winged Teal (*Anas discors*).

(14) Northern Shoveler (*Anas clypeata*).

(15) Northern Pintail (*Anas acuta*).

(16) Green-winged Teal (*Anas crecca*).

(17) Canvasback (*Aythya valisineria*).

(18) Redhead (*Aythya americana*).

(19) Ring-necked Duck (*Aythya collaris*).

(20) Greater Scaup (*Aythya marila*).

(21) Lesser Scaup (*Aythya affinis*).

(22) King Eider (*Somateria spectabilis*).

(23) Common Eider (*Somateria mollissima*).

(24) Harlequin Duck (*Histrionicus histrionicus*).

(25) Surf Scoter (*Melanitta perspicillata*).

(26) White-winged Scoter (*Melanitta fusca*).

(27) Black Scoter (*Melanitta nigra*).

(28) Long-tailed Duck (*Clangula hyemalis*).

(29) Bufflehead (*Bucephala albeola*).

(30) Common Goldeneye (*Bucephala clangula*).

(31) Barrow's Goldeneye (*Bucephala islandica*).

(32) Hooded Merganser (*Lophodytes cucullatus*).

(33) Common Merganser (*Mergus merganser*).

(34) Red-breasted Merganser (*Mergus serrator*).

(b) Family Gaviidae.

(1) Red-throated Loon (*Gavia stellata*).

(2) Arctic Loon (*Gavia arctica*).

(3) Pacific Loon (*Gavia pacifica*).

(4) Common Loon (*Gavia immer*).

(5) Yellow-billed Loon (*Gavia adamsii*)—In the North Slope Region

only, a total of up to 20 yellow-billed loons inadvertently caught in fishing nets may be kept for subsistence purposes.

(c) Family Podicipedidae.

(1) Horned Grebe (*Podiceps auritus*).

(2) Red-necked Grebe (*Podiceps grisegena*).

(d) Family Procellariidae.

(1) Northern Fulmar (*Fulmarus glacialis*).

(2) [Reserved].

(e) Family Phalacrocoracidae.

(1) Double-crested Cormorant (*Phalacrocorax auritus*).

(2) Pelagic Cormorant (*Phalacrocorax pelagicus*).

(f) Family Gruidae.

(1) Sandhill Crane (*Grus canadensis*).

(2) [Reserved].

(g) Family Charadriidae.

(1) Black-bellied Plover (*Pluvialis squatarola*).

(2) Common Ringed Plover (*Charadrius hiaticula*).

(h) Family Haematopodidae.

(1) Black Oystercatcher (*Haematopus bachmani*).

(2) [Reserved].

(i) Family Scolopacidae.

(1) Greater Yellowlegs (*Tringa melanoleuca*).

(2) Lesser Yellowlegs (*Tringa flavipes*).

(3) Spotted Sandpiper (*Actitis macularia*).

(4) Bar-tailed Godwit (*Limosa lapponica*).

(5) Ruddy Turnstone (*Arenaria interpres*).

(6) Semipalmated Sandpiper (*Calidris pusilla*).

(7) Western Sandpiper (*Calidris mauri*).

(8) Least Sandpiper (*Calidris minutilla*).

(9) Baird's Sandpiper (*Calidris bairdii*).

(10) Sharp-tailed Sandpiper (*Calidris acuminata*).

(11) Dunlin (*Calidris alpina*).

(12) Long-billed Dowitcher (*Limnodromus scolopaceus*).

(13) Common Snipe (*Gallinago gallinago*).

(14) Red-necked phalarope (*Phalaropus lobatus*).

(15) Red phalarope (*Phalaropus fulicaria*).

(j) Family Laridae.

(1) Pomarine Jaeger (*Stercorarius pomarinus*).

(2) Parasitic Jaeger (*Stercorarius parasiticus*).

(3) Long-tailed Jaeger (*Stercorarius longicaudus*).

(4) Bonaparte's Gull (*Larus philadelphia*).

(5) Mew Gull (*Larus canus*).

(6) Herring Gull (*Larus argentatus*).

(7) Slaty-backed Gull (*Larus schistisagus*).

(8) Glaucous-winged Gull (*Larus glaucescens*).

(9) Glaucous Gull (*Larus hyperboreus*).

(10) Sabine's Gull (*Xema sabini*).

(11) Black-legged Kittiwake (*Rissa tridactyla*).

(12) Red-legged Kittiwake (*Rissa brevirostris*).

(13) Ivory Gull (*Pagophila eburnea*).

(14) Arctic Tern (*Sterna paradisaea*).

(15) Aleutian Tern (*Sterna aleutica*).

(k) Family Alcidae.

(1) Common Murre (*Uria aalge*).

(2) Thick-billed Murre (*Uria lomvia*).

(3) Black Guillemot (*Cepphus grylle*).

(4) Pigeon Guillemot (*Cepphus columba*).

(5) Cassin's Auklet (*Ptychoramphus aleuticus*).

(6) Parakeet Auklet (*Aethia psittacula*).

(7) Least Auklet (*Aethia pusilla*).

(8) Whiskered Auklet (*Aethia pygmaea*).

(9) Crested Auklet (*Aethia cristatella*).

(10) Rhinoceros Auklet (*Cerorhinca monocerata*).

(11) Horned Puffin (*Fratercula corniculata*).

(12) Tufted Puffin (*Fratercula cirrhata*).

(l) Family Strigidae.

(1) Great Horned Owl (*Bubo virginianus*).

(2) Snowy Owl (*Nyctea scandiaca*).

Subpart D—Annual Regulations Governing Subsistence Harvest

3. In subpart D, revise § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2008 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.*

(1) Northern Unit (*Pribilof Islands*):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.*

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with local subsistence users, field biologists, and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(c) *Bristol Bay Region.*

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.*

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.*

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.*

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ W and south of the latitude line 70°45′ N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W and north of the latitude line 70°45′ N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: Yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be caught inadvertently in subsistence fishing nets in the North Slope Region and kept for subsistence use. Individuals must report each yellow-billed loon inadvertently caught while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: State of Alaska Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area (Harvest area: Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: Portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR 100.3].

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: Small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay [Icy Cape to Pt. Riou], and coastal lands and islands bordering the Gulf of Alaska from Pt. Manby southeast to Dry Bay).

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

§§ 92.32 and 92.33 [Removed and Reserved]

4. Remove and reserve §§ 92.32 and 92.33.

Dated: September 24, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–20243 Filed 10–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 070809454–7459–01]

RIN 0648–AV82

Marine Mammals; Advance Notice of Proposed Rulemaking

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); extension of comment period.

SUMMARY: On September 13, 2007, NMFS published an ANPR soliciting public comments on revisions to its implementing regulations at 50 CFR part 216 governing the issuance of permits for scientific research and enhancement activities involving marine mammals. Written comments were due by November 13, 2007. NMFS has decided to allow additional time for submission of public comments on this action.

DATES: The public comment period for this action has been extended for 30 days. Written comments must be received or postmarked by December 13, 2007.

ADDRESSES: You may submit comments by any one of the following methods:

• E-mail: *NMFS.Pr1Comments@noaa.gov* and include in the subject line the following document identifier: Permit Regulations ANPR;

• Via the Federal eRulemaking Portal: *http://www.regulations.gov*;

• Fax: 301–427–2521, Attn: Chief, Permits, Conservation and Education Division (Permit Regulations ANPR); or

• Mail: Chief, Permits, Conservation and Education Division, Attn: Permit Regulations ANPR, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Amy Sloan at (301) 713–2289.

SUPPLEMENTARY INFORMATION: The ANPR, published on September 13, 2007 (72 FR 52339), is available upon request and can be found on the NMFS Office of Protected Resources web site: *http://www.nmfs.noaa.gov/pr/permits/mmpa__anpr.htm*.

Dated: October 9, 2007

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–20229 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070808450–7540–01]

RIN 0648–AV83

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Regulatory Amendment to Adopt Fishing Gear Standards for the NE Multispecies Regular B Day-At-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing minimum performance standards of fishing gear proposed for use in both the NE multispecies Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. Under the current regulations, the only fishing gear allowed for use in the Eastern U.S./Canada Haddock SAP and the only trawl gear allowed for use in the Regular B DAS Program is a properly configured haddock separator trawl. The purpose of this rule is to ultimately provide greater flexibility to fishermen participating in these programs.

DATES: Written comments must be received no later than 5 p.m. local time on November 14, 2007.

ADDRESSES: You may submit comments, identified by RIN 0648–AV83, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*

• Fax: (978) 281–9135, Attn: Douglas Potts

• Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Please write on the envelope: Comments on Proposed B-DAS Gear Standard (RIN 0648–AV83).

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) differentiated DAS into three categories: Category A DAS; Category B (regular and reserve) DAS; and Category C DAS. Category B DAS (regular and reserve) were intended to allow effort on stocks that could support additional harvest while avoiding stocks of concern. The final rule implementing Framework Adjustment (FW) 40–A (November 19, 2004, 69 FR 67780) created two programs that allow vessels to use their allocation of Category B DAS, i.e., the Eastern U.S./Canada Haddock SAP Program and the Regular B DAS Program.

FW 40–A specified that vessels fishing in the Eastern U.S./Canada Haddock SAP must use gear that has been demonstrated not to catch significant amounts of cod. Upon implementation of FW 40–A, the only gear authorized for participation in this SAP was a haddock separator trawl, as described in 50 CFR 648.85(a)(3)(iii)(A). The FW 42 final rule (October 23, 2006, 71 FR 62156) modified the requirements for approval of other fishing gear for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, as specified in § 648.85(b)(6)(iv)(J)(*2*) and (b)(8)(v)(E)(*2*), respectively. Specifically, this action authorized the Regional Administrator to approve the use of additional fishing gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, provided the gear met performance standards to be proposed by the Council.

On June 21, 2007, the Council approved a motion to recommend that the Regional Administrator approve the following gear performance standards when considering additional gear for the Eastern U.S./Canada Haddock SAP, or additional trawl gear for the Regular B DAS Program: New gear must demonstrate a statistically significant reduction in catch of each regulated NE multispecies, and other stocks of concern, of at least 50 percent (by weight, on a trip-by-trip basis); or the

catch of each regulated NE multispecies, and other stocks of concern, in the new gear must be less than 5 percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis).

The Council further recommended that: These standards must be met in a completed experiment, where comparisons of new gear would be made to an appropriately selected control gear, that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator; and that the requests for additional gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP would be made by either the Council or Executive Committee.

The proposed rule seeks public comment on these standards and NMFS's interpretation of them. After review of the proposed performance standards, NMFS interprets that the phrase ''... reduction in each regulated NE multispecies'' would exclude any NE multispecies stock, identified by the Council as not being subject to the gear performance standard (e.g., Georges Bank haddock in the Eastern U.S./Canada Haddock SAP). Further, the term ''stock of concern'' is only defined in the regulations for species managed under the NE Multispecies FMP. However, in the proposed performance standards submitted by the Council, the term ''stock of concern'' is specific to non-groundfish stocks. Thus, the Council or the Council's Executive Committee, when considering prospective gear for the Eastern U.S./Canada Haddock SAP or the Regular B DAS Program, would need to consider what species of concern, in addition to non-excluded NE multispecies, e.g., monkfish or skates, should meet the criteria specified in the proposed performance standards before the Council or the Council's Executive Committee submits a request to the Regional Administrator for approval. The performance standards, as interpreted by NMFS, and as proposed in this rule, would therefore read as follows: ''The Regional Administrator may authorize additional gear for use in the Regular B DAS Program (or the Eastern U.S./Canada Haddock SAP, as applicable) through notice consistent with all applicable law. The new gear must demonstrate a statistically significant reduction in catch of regulated NE multispecies, other than regulated NE multispecies identified by the Council as not being subject to this gear performance standard, and other non-groundfish stocks of concern identified by the Council, of at least 50 percent (by weight, on a trip-by-trip basis), or the catch of each non-targeted regulated NE multispecies and other stocks of concern identified by the Council in the new gear must be less than 5 percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis).''

This proposed rule would also correct an inadvertent omission by reinserting relevant regulatory text specific to the U.S./Canada Management Area gear requirements that was inadvertently removed through the final rule implementing FW 42. The Amendment 13 final rule (April 27, 2004, 69 FR 22906) established gear requirements for vessels participating in the Eastern U.S./Canada Area. Trawl vessels participating in this area are required to use either a haddock separator trawl or one of two flatfish nets defined in the regulations at § 648.85(a)(3)(iii)(A) and (B). These gear requirements were intended to allow vessels to harvest either haddock or flatfish without catching cod and other groundfish stocks not capable of supporting higher catch rates. An April 13, 2006, emergency final rule (71 FR 19348) revised the introductory text of the regulations at § 648.85(a)(3)(iii) to accommodate revised regulatory references associated with emergency measures. However, due to an error in the regulatory text of that rule, the emergency final rule inadvertently and indefinitely removed the introductory text at § 648.85(a)(3)(iii) from the regulations. This regulation was not reinserted in the FW 42 final rule, so the current regulations do not accurately reflect the original gear requirements implemented under Amendment 13, as contained in the original introductory text of § 648.85(a)(3)(iii). To correct this omission, this action would reinsert the introductory text at § 648.85(a)(3)(iii) that was inadvertently removed by the April 13, 2006, emergency final rule as revised by this rule to allow additional fishing gear that may be approved for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This amendment does not specifically change any gear requirements. It provides standards that must be met before a new gear can be proposed for use in these programs. Once a gear is proposed by the Council under these standards, then a fuller analysis of the environmental and/or economic impacts of its adoption may be necessary at that time. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 9, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(132) and (c)(81) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii); unless using other gear as authorized under § 648.85 (b)(6) or (b)(8).

* * * * *

(c) * * *

(81) If fishing with trawl gear in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under

§ 648.85(a)(3)(iii)(A); or other gear as authorized under § 648.85(b)(6)(iv)(J).

* * * * *

3. In § 648.85, paragraphs (a)(3)(iii) introductory text is added and paragraphs (b)(6)(iv)(J)(*2*) and (b)(8)(v)(E)(*2*) are revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (b)(8) of this section, must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section, or gear authorized under paragraphs (b)(6) and (b)(8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(J) * * *

(*2*) *Approval of additional gear.* At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(*2*)(*i*) or (*ii*) of this section in a completed experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(*2*) will be made to an appropriately selected control gear.

(*i*) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of regulated species, unless otherwise specified in this paragraph, and other stocks of concern identified by the Council. This does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(*ii*) The catch of each regulated species, unless otherwise specified in this paragraph, and other stocks of concern identified by the Council, must be less than five percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis). This does not apply to regulated species identified by the Council as not being subject to gear performance standards.

* * * * *

(8) * * *

(v) * * *

(E) * * *

(*2*) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(*2*).

* * * * *

[FR Doc. E7–20279 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 198
Monday, October 15, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 19, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hilton San Diego Airport/Harbor Island, 1960 Harbor Island Drive, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Hilton San Diego Airport/Harbor Island, 1960 Harbor Island Drive, San Diego, CA on Friday, October 19, 2007, from 8:30 a.m to 5 p.m.

The purpose of the meeting is to discuss questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 19, 2007.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries .

[FR Doc. E7–20184 Filed 10–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0113]

Fiscal Year 2008 Agricultural Quarantine and Inspection User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to user fees charged for agricultural quarantine and inspection services provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The purpose of this notice is to remind the public of the user fees for fiscal year 2008 (October 1, 2007, through September 30, 2008).

FOR FURTHER INFORMATION CONTACT: For information concerning AQI program operations, contact Mr. William E. Thomas, Director for Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5214. For information concerning user fee rate development, contact Mrs. Kris Caraher, Section Head, User Fees Section, Financial Services Branch, FMD, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–5901.

SUPPLEMENTARY INFORMATION: User fees to recover the costs of providing inspections of certain commercial conveyances are found in 7 CFR part 354 (referred to below as the regulations). These user fees are authorized by Section 2509(a) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (21 U.S.C. 136a), which authorizes the collection of user fees for agricultural quarantine and inspection (AQI) services.

In an interim rule published in the **Federal Register** on December 9, 2004 (69 FR 71660–71683, Docket No. 04–042–1), and effective January 1, 2005, we established, for fiscal years 2005 through 2010 and beyond, user fees for many of the types of conveyances or persons to whom AQI services are provided, i.e., commercial vessels (watercraft), commercial trucks, loaded commercial railroad cars, commercial aircraft, and international airline passengers. The regulations provide specific information regarding the applicability of, and exceptions to, AQI user fees. As specified in 7 CFR 354.3, the user fees for these AQI services for fiscal year 2008 are as follows:

Service	Unit	Amount
Inspection of commercial vessels of 100 net tons or more (see 7 CFR 354.3(b)	Per arrival [1]	$492.00
Inspection of commercial trucks (see 7 CFR 354.3(c))	Per arrival [2]	5.25
Inspection of commercial railroad cars (see 7 CFR 354.3(d))	Per arrival [3]	7.75
Inspection of commercial aircraft (see 7 CFR 354.3(e))	Per arrival	70.50
Inspection of international aircraft passengers (see 7 CFR 354.3(f))	Per arrival	5.00

[1] Not to exceed 15 payments in a calendar year (i.e., no additional fee will be charged for a 16th or subsequent arrival in a calendar year).

[2] A prepaid AQI permit valid for one calendar year may be obtained for an amount 20 times the AQI user fee for each arrival ($105 from October 1, 2007, through September 30, 2008).

[3] The AQI user fee may be prepaid for all arrivals of a commercial railroad car during the calendar year for an amount 20 times the AQI user fee for each arrival ($155 from October 1, 2007, through September 30, 2008).

Done in Washington, DC, this 9th day of October 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–20224 Filed 10–12–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Recreation Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Shawnee National Forest, USDA Forest Service.

ACTION: Notice of Proposed New Fee Sites and Recreation Facilities Modifications.

SUMMARY: The Shawnee National Forest is proposing to begin charging fees at eight day-use recreation sites, as well as for equestrian use of the designated trail system. Additionally, the Forest proposes to increase fees at five campgrounds. The proposed fees are based on the level of amenities and services provided, cost of operation and maintenance and market assessment. At this time, the fees described below are only proposed and may be modified upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance of recreation sites and the Forest's designated equestrian trail system. The establishment of fees at certain types of recreation sites on national forests is authorized by the Federal Lands Recreation Enhancement Act which was signed into law by President Bush in December 2004.

In addition to the new fees and the fee increases, the Shawnee National Forest is proposing to increase the cost effectiveness of some recreation facilities by removing amenities at these sites.

Proposed Day-Use Fees

Day-use fees of $5.00 per car are being considered for the Garden of the Gods interpretive and picnic sites, Pounds Hollow picnic and beach area, Bell Smith Springs interpretive and picnic areas, Lincoln Memorial at Jonesboro, Johnson Creek picnic and beach area, the Johnson Creek Boat Launch and the Little Grand Canyon Trailhead. An occupant of each car entering the parking areas of these sites would be expected to self-pay using a fee envelope provided at the site. Day-use fees of $5.00 per boat are being proposed for use of the Buttermilk Hill Picnic Site. At Buttermilk Hill an occupant of each boat would be expected to self-pay using a fee envelope provided at the site. Fees collected at these areas would be used for the maintenance and upkeep of the facilities.

Proposed Trail Use Permits for Equestrians

The Shawnee National Forest also proposes to establish a trail permit fee of $5.00 per day ($50.00 per year) for equestrians to use designated national forest trails. In areas where cross country riding is authorized, and on national forest roads, riding would remain free. Permits would be available from Shawnee National Forest Offices and from cooperating vendors. Permits would be issued to individuals and would not be transferable. No permit would be required for persons under 16 years of age. Fees collected for equestrian use of trails would be used for the maintenance, construction or enhancement of equestrian trails and trailhead facilities.

Annual Passes for Day Use Facilities and Equestrian Trails

An Annual Pass will be available for frequent visitors or those who wish to recreate for longer periods of time on the Shawnee. A Shawnee National Forest Annual Pass will be available at Shawnee National Forest offices for $50.00 and will admit one vehicle into day-use fee areas at the Pounds Hollow Recreation Area, Garden of the Gods Recreation Area, Bell Smith Springs, Johnson Creek Recreation Area, Lincoln Memorial and the Little Grand Canyon Trailhead for an unlimited number of visits for one year from the date of purchase. A Shawnee National Forest Annual Equestrian Trail Permit will be available for $50.00 at Shawnee National Forest offices or at participating vendors and would authorize use of one horse or mule on designated trails that are open to equestrian use for one year from the date of purchase.

Proposed Fee Increases for Shawnee National Forest Campgrounds

The Shawnee National Forest proposes to increase fees at five campgrounds. A campsite at Pharaoh Campground at Garden of the Gods fees would increase from $5.00 to $12.00 per night with the fee also covering day-use of Pharaoh Picnic Area and the Garden of the Gods Interpretive Site. Fees at Camp Cadiz would be raised from $5.00 to $10.00 per night. Fees at Pine Ridge Campground at the Pounds Hollow Recreation Area would increase from $5.00 to $12.00 per night and would include use of the Pounds Hollow Picnic and Beach day-use sites. Fees at Pine Hills Campground would increase from $5.00 to $10.00 per night. Fees at the Johnson Creek Group Campground would increase from $5.00 to $12.00 for a single site, $9.00 to $15.00 for a double site and $15.00 to $20.00 for a triple site. The fees at the Johnson Creek Group Campground would also include the use of the Johnson Creek boat launch, picnic and beach day-use sites.

Proposed Modification of Shawnee National Forest Recreation Facilities

The Shawnee National Forest proposes to increase the cost effectiveness of developed recreation facilities management by reducing services at some locations where use continues to be light. The following actions are being considered: Removal of the tables, fire rings and toilets from the Johnson Creek Single Family Campground (the Group Campground will remain open), removal of one picnic shelter from the Johnson Creek Picnic Area, removal of tables, fire rings and toilets from two of four loops of Pine Ridge Campground at the Pounds Hollow Recreation Area, removal of the water system at Tower Rock Campground and removal of the tables and grills at the Tower Rock Picnic Site, and removal of tables, fire rings, toilets and water tanks from the Buck Ridge Campground at Lake of Egypt. Fees will no longer be required for the use of the Tower Rock Campground. The boat launches at Tower Rock and at Hickory Point on Lake of Egypt would remain open and free to the public. Additionally, the boardwalk and other facilities at the Oakwood Bottoms Green-Tree Reservoir site, and the picnic and interpretive shelters at Illinois Iron Furnace picnic site would not be replaced when they have reached the end of their serviceability. The toilet at Teal Pond would be removed without replacement.

DATES: New fees may begin as early as April 2008. Modifications to facilities may begin as soon as June of 2008.

The Shawnee National Forest will host open-house meetings to explain the fee and facility proposals or to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004. The meetings will be open to the public. Meetings will be held on Tuesday, November 6, 2007 from 4 to 7 p.m. at the Vienna High School, 601 N. 1st Street, Vienna, Illinois; on Wednesday, November 7, 2007 from 4 to 7 p.m. at the Knights of Columbus Hall, 100 Columbus Drive, Marion, Illinois;

and on Wednesday, November 14, 2007 from 4 to 7 p.m. at the Davis-McCann Center, 15 North 14th Street, Murphysboro, Illinois.

ADDRESSES: Comments and recommendations regarding the Shawnee National Forest's recreation fee and/or facilities proposals can be sent to Hurston A. Nicholas, Forest Supervisor, Shawnee National Forest, 50 Highway 145 South, Harrisburg, IL 62946. Comments or recommendations concerning these recreation fee proposals should be submitted prior to mid April 2008 in order to be considered. You can e-mail your comments using the ''Contact Us'' link on the Shawnee National Forest Web site at: *http://www.fs.fed.us/r9/forests/shawnee/.*

FOR FURTHER INFORMATION CONTACT: Tim Pohlman, Recreation Program Manager, 618–253–7114. Information about proposed fee changes can also be found on the Shawnee National Forest Web site at: *http://www.fs.fed.us/r9/forests/shawnee/passes/.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Additionally, the Act stipulates that the establishment of new fees or the modification of existing fees must be reviewed by a Recreation Resource Advisory Committee (RRAC) prior to their implementation. Once public recommendations and comments have been gathered, these fee proposals, along with any modifications resulting from public comments, will be submitted for review by the RRAC.

Dated: October 9, 2007.

Hurston A. Nicholas,

Forest Supervisor.

[FR Doc. E7–20232 Filed 10–12–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Sandy Urban Fish Pond/Park Project, Salt Lake County, UT

AGENCY: Natural Resources Conservation Service (NRCS) in Utah, U.S. Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Sandy Urban Fish Pond/Park Project, Salt Lake County, UT.

FOR FURTHER INFORMATION CONTACT: M. Ron Davidson, Acting State Conservationist, Natural Resources Conservation Service, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84138–1100; telephone number (801) 524–4550.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Ron Davidson, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

Sandy Urban Fish Pond/Park Project

Notice of a Finding of No Significant Impact

During Fiscal Year 2007, Congress appropriated funds through a Congressional Earmark to NRCS to provide technical and financial assistance to Sandy City Parks and Recreation for the Sandy Urban Fish Pond/Park Project. An Environmental Assessment (EA) was prepared in order to make a reasoned and informed decision in selecting which alternative to implement and also to determine if the proposed action is a major federal action that would significantly affect the quality of the human environment. The purpose for constructing an urban fish pond and park is to provide an additional recreational as well as an educational element to Sandy City. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI and the EA are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ron Davidson. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: October 4, 2007.

M. Ron Davidson,

Acting State Conservationist, Natural Resources Conservation Service, Utah.

[FR Doc. E7–20198 Filed 10–12–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 30, 2007, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session:

1. Welcome and Introductions.
2. Remarks from Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session:

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the confidence, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than October 23, 2007.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 26, 2007 pursuant to Section 10(d) of the Federal

Advisory Committee Act, as amended (5 U.S.C. app. 2 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: October 10, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–5067 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 10, 2007, the Department of Commerce (the Department) published its preliminary results of the administrative review of the antidumping duty order on certain corrosion–resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) for the period from August 1, 2005, through July 31, 2006. *See Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 51584 (September 10, 2007) (Preliminary Results). We are rescinding the review with respect to the Pohang Iron & Steel Company, Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group).

EFFECTIVE DATE: October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Victoria Cho at (202) 482–5075 or James Terpstra at (202) 482–3965, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: In the *Preliminary Results*, the Department inadvertently indicated that it planned to rescind the request for review of the antidumping order for the POSCO Group in the Final Results. On December 28, 2006, the petitioners[1] timely withdrew their request for an administrative review of the POSCO Group. It is the Department's practice to rescind an administrative review in a timely manner, in whole or part, if no other interested party submitted comments regarding the petitioners' timely withdrawal of their request for a review. *See Notice of Partial Rescission of Antidumping Duty Administrative Review: Tenth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 38060 (July 12, 2007), and *also see Certain Pasta From Turkey: Notice of Rescission of Antidumping Duty Administrative Review*, 69 FR 60356 (October 8, 2004). To facilitate the timely implementation of customs instructions, we are rescinding the review of the antidumping order for the POSCO Group.

Final Rescission of Administrative Review for the POSCO Group

As provided in 19 CFR 351.213(d)(1), ''{t}he Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The petitioners withdrew their request for an administrative review within 90 days of the date of publication of the notice of initiation of the instant administrative review and no other party requested an administrative review of the POSCO Group. No party commented on the petitioners' withdrawal. Therefore, the Department is rescinding the administrative review with respect to the POSCO Group.

Dated: October 2, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–20261 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Northwestern University, et al., Notice of Consolidated Decision on Applications, for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 07–059. Applicant: Northwestern University, Evanston, IL 60208. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 72 FR 53538, September 19, 2007.

Docket Number: 07–061. Applicant: University of Pennsylvania, Philadelphia, PA 19104. Instrument: Electron Microscope, Model JEM–1011. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 72 FR 53538, September 19, 2007.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: October 9, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–20262 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 5, 2007. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce,

[1] Petitioners are the United States Steel Corporation (U.S. Steel) and Mittal Steel USA ISG, Inc. (Mittal Steel USA).

Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 2104.

Docket Number: 07–055. Applicant: University of Oklahoma, Mewbourne School of Petroleum and Geological Engineering, 100 E. Boyd Street, Suite T–301, Norman, OK 73019. Instrument: Electron Microscope, Quanta 200. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for teaching several undergraduate and graduate courses/laboratories in the Petroleum Engineering Department. Students will use the environmental scanning electron microscope to study rocks mineral composition, cementation, microstructure, pore size distribution etc. Application accepted by Commissioner of Customs: September 14, 2007.

Docket Number: 07–057. Applicant: University of Alabama at Birmingham, 1720–7th Avenue South - SC 501, Birmingham, AL 35294–0017. Instrument: Electron Microscope, Model H–7650–II. Manufacturer: Hitachi High–Technologies Corp., Japan. Intended Use: The instrument is intended to be used to study the ultrastructure of brain tissue from experimental animals and postmortem human samples. The objectives are to describe normal human brain ultrastructure, ultrastructural abnormalities in the postmortem brains of subjects with brain disease and normal and abnormal ultrastructure in experimental animals. Application accepted by Commissioner of Customs: September 14, 2007.

Docket Number: 07–064. Applicant: Stowers Institute for Medical Research, 901 Volker Blvd., Kansas City, MO.64110. Instrument: Electron Microscope, Model Tecnai G2. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to obtain high resolution and high contrast images of various cellular structures from research models. Application accepted by Commissioner of Customs: September 7, 2007.

Docket Number: 07–065. Applicant: State University of New York at Binghamton, 4400 Vestal Parkway East, Binghamton, NY 13902. Instrument: Electron Microscope, Model Nova 600 NanoLab, FEI Company, Netherlands. Intended Use: The instrument is to be used to provide a single chamber to image, analyze and cross section devices, layers, and interfaces. Application accepted by Commissioner of Customs: September 25, 2007.

Dated: Ocotober 9, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff.

[FR Doc. E7–20263 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Electronic Education Fairs for China and India: Video Contest

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Chinese and Indian nationals studying at U.S. accredited colleges and universities are invited to submit short videos highlighting their experiences with U.S. higher education.

DATES: Contest submissions will be accepted from the date of this Notice until 3 p.m. EDT November 9, 2007. Winners will be posted on [or before] November 15, 2007.

ADDRESSES: Mail Submissions to Joshua Wu, U.S. Department of Commerce, Room 1202, 1401 Constitution Avenue, NW., Washington, DC 20230, Tel: (202) 482–2289.

FOR FURTHER INFORMATION CONTACT: Joshua Wu, U.S. Department of Commerce. Tel: (202) 482–2289; Jennifer Moll, U.S. Department of Commerce, Tel: (248) 508–8404; Keith Roth, U.S. Department of Commerce, Rm. 1104. Tel: (202) 482–5012.

SUPPLEMENTARY INFORMATION: The U.S. Electronic Education Fairs for China and India are part of a joint initiative between the U.S. Department of Commerce and the U.S. Department of State. The purpose of the initiative is to inform Chinese and Indian students who are interested in studying outside of their home countries about the breadth and depth of the higher education opportunities available in the United States.

To continue the success of LiuXueUSA (''Study Abroad USA''), a U.S. initiative launched in 2006 to promote U.S. higher education in China, and to promote a similar initiative that will be launched in India later this year, the U.S. Departments of Commerce and State are holding a video contest. The contest aims to find the most compelling stories of Chinese and Indian students studying at U.S. colleges and universities by inviting them to create videos up to 3 minutes about their experiences as international students and the impact that studying in the United States has had on their lives. The winning videos will be featured on either the LiuXueUSA or the upcoming India Web site. A DVD release will also follow, sharing these incredible stories with viewers across the globe, and encouraging the next generation of international students to come and experience the opportunities and benefits associated with studying in the United States.

Program Details and Rules:

- The contest will be open to all Chinese and Indian Nationals studying at U.S. institutions at both the undergraduate and graduate levels.
- American students may also participate in the filming and editing process.
- Videos should be no more than 3 minutes long.
- Videos should be submitted either on DVD via mail (see address above) or via email with a link to a site from which the video can be downloaded by November 19, 2007.
- Videos should be submitted in Adobe Flash format.
- A panel of U.S. Government (USG) officials from the Departments of State, Commerce, and Education will select the winning videos.
- Videos should cater to relevant audiences in China or India, including teachers, students, parents and counselors.
- All videos should have English subtitles.
- The USG will not alter or edit the submitted content in any way, and the students will retain the copyrights of the videos; the USG will be granted rights to use the videos for the purposes of this initiative.
- Only amateur submissions will be accepted and considered.
- No explicit content (sexual or other) will be accepted.

Themes: The videos should address one of the following topics:

- What makes U.S. education special for international students?
- What has been the most unique experience you have had as a foreign student?
- Studies aside, what is your favorite extracurricular activity?
- What have been your best and worst food experiences?
- How would you characterize your dorm/living experiences in the United States?
- How are you paying for your studies?

Winners

Winners will have their videos featured on one of the above-mentioned Web sites and released on DVD. Other potential opportunities for exposure may also be possible.

Contest submissions by Chinese and Indian students will be accepted and reviewed on a rolling basis.

Dated: October 5, 2007.

David Long,

Director, Office of Service Industries, International Trade Administration.

[FR Doc. E7–20265 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

0648–XD23

Marine Mammals; Issuance of Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that individuals and institutions have been issued Letters of Confirmation for activities conducted under the General Authorization for Scientific Research on marine mammals. See **SUPPLEMENTARY INFORMATION** for a list of names and address of recipients.

ADDRESSES: The Letters of Confirmation and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521.

FOR FURTHER INFORMATION CONTACT: Office of Protected Resources, Permits Division, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested Letters of Confirmation have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The General Authorization allows for bona fide scientific research that may result only in taking by level B harassment of marine mammals. The following Letters of Confirmation were issued in Fiscal Year 2007.

File No. 572–1869: Issued to Daniel K. Odell, Ph.D., Hubbs-SeaWorld Research Institute, 6295 Sea Harbor Drive, Orlando, FL 32821 on November 14, 2006, for vessel surveys to conduct photo-identification, behavioral observations, passive acoustic recordings, and videography of bottlenose dolphins (*Tursiops truncatus*) in the Indian River Lagoon on the east-central coast of Florida; in the Key West (Monroe County, FL) area; and in the coastal waters of Georgia, primarily in the vicinity of Sapelo Sound and St. Catherine's Island. In addition, aerial surveys of bottlenose dolphins will be conducted over the Indian River Lagoon. These activities may be conducted through November 14, 2011.

File No. 699–1891: Issued to Kathryn A. Ono, Ph.D., University of New England, 11 Hills Beach Road, Biddeford, ME 04005 on January 11, 2007, for a study to determine the diet of seals off the coast of Maine and to use fecal DNA to determine if hard part analysis is an accurate representation of the occurrence of certain prey species in pinniped diets. This study will result in harassment of gray seals (*Halichoerus grypus*), harbor seals (*Phoca vitulina*), hooded seals (*Cystophora cristata*), and harp seals (*Pagophilus groenlandicus*) in coastal Maine through December 1, 2011.

File No. 809–1902: Issued to Susan G. Barco, Virginia Aquarium & Marine Science Center Foundation, 717 General Booth Boulevard, Virginia Beach, VA 23451 on February 21, 2007, for vessel surveys for photo-identification of bottlenose dolphins throughout the coastal and offshore waters geographically contiguous with the Commonwealth of Virginia (including Maryland waters of the Chesapeake Bay, Assateague Island to Ocean City, and waters off northeastern North Carolina) through February 28, 2012.

File No. 1094–1836–02: Issued to Peggy Stap, 1479 W. Dowling Rd., Dowling, MI 49050–9718, on March 7, 2007, for conducting small vessel surveys to collect photo-identification and behavioral data using photography, video, and hydrophone recordings to study the foraging strategies of transient and offshore killer whales (*Orcinus orca*) as well as investigate the abundance, distribution, movement, and frequency of occurrence of other cetacean species in the Monterey Bay National Marine Sanctuary. This study will result in takes of 17 species of cetaceans through April 30, 2011. This study was modified to add harassment of California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), and harbor seals. This amended GA LOC supercedes version 1094–1836–01, issued on June 30, 2006.

File No. 717–1909: Issued to Jan Ostman-Lind, Ph.D., Kula Nai'a Wild Dolphin Research Foundation, P.O. Box 6870, Kamuela, HI 96743 on March 29, 2007, for vessel surveys to conduct photo-identification, focal follows, and passive acoustic recordings of spinner dolphins (*Stenella longirostris*) in coastal waters off the Island of Hawai'i and in waters up to 25 nautical miles offshore through March 31, 2012.

File No. 819–1800–01: Issued to John G. Morris, Ph.D., Florida Institute of Technology, Biology Department, 150 West University Boulevard, Melbourne, FL 32901 on April 9, 2007, for photo-identification, behavioral observations, and passive acoustic recordings of bottlenose dolphins, via vessel surveys in the Indian River Lagoon, Florida between Eau Gallie and Sebastian Inlet through August 31, 2008. This study was modified to extend the duration from August 31, 2007 to August 31, 2008. This amended GA LOC supercedes version 819–1800, issued on July 27, 2005.

File No. 881–1918: Issued to Anne Hoover-Miller, Alaska SeaLife Center, 301 Railway Avenue, P.O. Box 1329, Seward, AK 99664 on May 9, 2007, for aerial and vessel surveys and remote video monitoring of harbor seals in Alaska through May 15, 2012.

File No. 699–1891–01: Issued to Kathryn A. Ono, Ph.D., University of New England, 11 Hills Beach Road, Biddeford, ME 04005 on June 8, 2007, for a study to determine the diet of seals off the coast of Maine and to use fecal DNA to determine if hard part analysis is an accurate representation of the occurrence of certain prey species in pinniped diets. This study, which will result in harassment of gray, harbor, harp, and hooded seals in coastal Maine through December 1, 2011, was modified to include collection of harbor seal scat and additional harassment of harbor seals. This amended GA LOC supercedes version 699–1891, issued on January 11, 2007.

File No. 481–1795–01: Issued to Tamara McGuire, Ph.D., LGL Alaska Research Associates, Inc., 1101 East 76th Avenue, Suite B, Anchorage, AK 99516 on August 21, 2007, for aerial, vessel, and land-based surveys of belugas (*Delphinapterus leucas*) in upper Cook Inlet, Alaska. The study, which includes acoustic monitoring and incidental harassment during prey studies of belugas, is authorized until May 30, 2010. This study was modified to change the Principal Investigator from Dr. Tim Markowitz to Dr. McGuire. This amended GA LOC supercedes version 481–1795, issued on May 20, 2005.

File No. 10036: Issued to Brent S. Stewart, Ph.D., J.D., Hubbs-SeaWorld Research Institute, 2595 Ingraham Street, San Diego, CA 92109, on August 21, 2007, for studies of the breeding and

vocal behavior of four species of seals in the Antarctic pack ice and fast ice of western Amundsen, Bellingshausen, and eastern Ross seas between September 1, and November 2, 2007. This study will result in takes of Ross seals (*Ommatophoca rossii*), crabeater seals (*Lobodon carcinophaga*), Weddell seals (*Leptonychotes weddellii*), and leopard seals (*Hydrurga leptonyx*).

File No. 699–1891–02: Issued to Kathryn A. Ono, Ph.D., University of New England, 11 Hills Beach Road, Biddeford, ME 04005 on August 24, 2007, for a study to determine the diet of seals off the coast of Maine and to use fecal DNA to determine if hard part analysis is an accurate representation of the occurrence of certain prey species in pinniped diets. This study, which will result in harassment of gray seals, harbor, harp, and hooded seals in coastal Maine through December 1, 2011, was modified to allow harassment of additional harbor and gray seals during scat collections. This amended GA LOC supercedes version 699–1891–01, issued on June 8, 2007.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: October 9, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–20231 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

0648–XD34

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of two Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued two 1–year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, D.C., and persons operating under his authority.

DATES: Effective from August 16, 2007, through August 15, 2008.

ADDRESSES: Copies of the Navy's July 11, 2007, LOA application letter, the LOAs, the Navy's 2006–2007 annual LOA report and the Navy's 2007 Comprehensive Report are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at:*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289 (ext 128).

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on August 21, 2007 (72 FR 46846), and remain in effect through August 15, 2012. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system.

Summary of LOA Request

NMFS received an application from the U.S. Navy for two LOAs, one covering the *R/V Cory Chouest* and one the USNS IMPECCABLE, under the regulations issued on August 21, 2007 (72 FR 46846). The Navy requested that the LOAs become effective on August 16, 2007. The application requested authorization, for a period not to exceed 1 year, to take, by harassment, marine mammals incidental to employment of the SURTASS LFA sonar system for training, testing and routine military operations on the aforementioned ships in areas of the North Pacific Ocean. Due to the critical naval warfare requirements, the U.S. Navy has identified the necessity for both SURTASS LFA sonar vessels to be stationed in the North Pacific Ocean during the period of these LOAs.

Monitoring and Reporting

In compliance with the 2002–2007 SURTASS LFA sonar regulations, the Navy submitted an annual report for operations during 2006. The Navy also submitted a comprehensive report on SURTASS LFA sonar operations and the mitigation and monitoring activities conducted under the LOAs issued during that time period. A copy of these reports can be viewed and/or downloaded at:*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Authorization

NMFS has issued two LOAs to the U.S. Navy, authorizing the incidental harassment of marine mammals incidental to operating the two SURTASS LFA sonar systems for training, testing and routine military operations. Issuance of these two LOAs is based on findings, described in the preamble to the final rule (August 21, 2007, 72 FR 46846)) and supported by information contained in the Navy's required annual report on SURTASS LFA sonar, that the activities described under these two LOAs will have no more than a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected by marine mammal stocks for subsistence uses.

These LOAs remain valid through August 15, 2008, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184–216.186 (August 21, 2007, 72 FR 46846) and in the LOAs are undertaken.

Dated: October 2, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–20227 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 0648–XB13]

Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Eglin Air Force Base (EAFB) for the take of marine mammals, by Level B harassment only, incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations at EAFB, Florida.

DATES: Effective from October 5, 2007, through October 4, 2008.

ADDRESSES: A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings will be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take marine mammals by harassment. With respect to miltary readiness activities, harassment is defined as follows:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) establishes a 30–day public notice and comment period on any proposed IHA. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 7, 2007, NMFS received an application from EAFB requesting re-issuance of their IHA for the harassment, by Level B harassment only, of Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations at EAFB, Florida, in the northern Gulf of Mexico (GOM). Each of up to six missions per year would include up to five live detonations of approximately 10–lb (4.6–kg) net explosive weight charges to occur in approximately 60–ft (18.3–m) deep water from one to three nm (1.9 to 5.6 km) off shore. EAFB was granted an IHA in 2005 and 2006 for this activity.

Because the relative low cost and ease of use of mines lends itself to use by an array of transnational, rogue, and subnational adversaries that now pose the most immediate threat to American interests and because NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and military students from over 70 countries, this activity constitutes a ''military readiness activity,'' as defined in Section 315(f) of Public Law 107–314 (16 U.S.C. 703 note).

Specified Activities

The mission of NEODS is to train personnel to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and operations. The NEODS plans to utilize three areas within the Eglin Gulf Test and Training Range (EGTTR), consisting of approximately 86,000 mi^2 (222,739 km^2) within the GOM and the airspace above, for Mine Countermeasures (MCM) detonations, which involve mine-hunting and mine-clearance operations. The detonation of small, live explosive charges disables the function of the mines, which are inert for training purposes. The training would occur approximately one to three nautical miles (nm) (1.9 to 5.6 km) offshore of Santa Rosa Island (SRI) six times annually, at varying times within the year.

Each of the six training classes would include one or two ''Live Demolition Days.'' During each set of Live Demolition Days, five inert mines would be placed in a compact area on the sea floor in approximately 60 ft (18.3 m) of water. Divers would locate the mines by hand-held sonars. The AN/PQS–2A hand-held acoustic locator has a sound pressure level (SPL) of 178.5 re 1 µPascal @ 1 meter and the Dukane Underwater Acoustic Locator has a SPL of 157–160.5 re 1 µPascal @ 1 meter. Because output from these hand-held sound sources would attenuate to below any current threshold for protected species within approximately 10–15 m,

noise impacts are not anticipated and are not addressed further in this analysis.

Five charges packed with five lbs (2.3 kg) of C–4 explosive material will be set up adjacent to each of the mines. No more than five charges will be detonated over the 2–day period. Detonation times will begin no earlier than 2 hours after sunrise and end no later than 2 hours before dusk and charges utilized within the same hour period will have a maximum separation time of 20 minutes. Mine shapes and debris will be recovered and removed from the water when training is completed. A more detailed description of the work is contained in the application which is available upon request (see **ADDRESSES**).

Marine Mammals and Habitat Affected by the Activity

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and the West Indian manatee. While a few manatees may migrate as far north from southern Florida (where there are generally confined in the winter) as Louisiana in the summer, they primarily inhabit coastal and inshore waters and rarely venture offshore. NEODS missions are conducted one to three nm (5.6 km) from shore and effects on manatees are therefore considered very unlikely. Accordingly, EAFB did not seek an incidental take authorization from the U.S. Fish and Wildlife Service, which has jurisdiction over manatees.

Cetacean abundance estimates for the project area are derived from GulfCet II aerial surveys conducted from 1996 to 1998 over a 70,470 km^2 area, including nearly the entire continental shelf region of the EGTTR, which extends approximately 9 nm (16.7 km) from shore. The dwarf and pygmy sperm whales are not included in this analysis because their potential for being found near the project site is remote. Although Atlantic spotted dolphins do not normally inhabit nearshore waters, NMFS has included them in the analysis to ensure conservative mitigation measures are applied. The two marine mammal species expected to be affected by these activities, whose status and distribution were discussed in the proposed IHA (71 FR 43470; August 1, 2006), are the bottlenose dolphin (*Tursiops truncatus*) and the Atlantic spotted dolphin (*Stenella frontalis*). Further descriptions of the biology and local distribution of these species can be found in the application (see **ADDRESSES**); other sources such as Wursig *et al.* (2000), and the NMFS Stock Assessments, can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*.

Potential Effects of Activities on Marine Mammals

The primary potential impact to Atlantic bottlenose and the Atlantic spotted dolphins occurring in the EGTTR from the planned detonations is Level B harassment from noise. In the absence of any mitigation or monitoring measures, there is a very small chance that a marine mammal could be injured or killed when exposed to the energy generated from an explosive force on the sea floor. However, NMFS believes the required mitigation measures will preclude this possibility in the case of this particular activity. Analysis of NEODS noise impacts to cetaceans was based on criteria and thresholds initially presented in U.S. Navy Environmental Impact Statements for ship shock trials of the SEAWOLF submarine and the WINSTON CHURCHILL vessel and subsequently adopted by NMFS.

Non-lethal injurious impacts (Level A Harassment) are defined in EAFB's application and this document as tympanic membrane (TM) rupture and the onset of slight lung injury. The threshold for Level A Harassment corresponds to a 50–percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 μPa^2 s. TM rupture is well-correlated with permanent hearing impairment (Ketten (1998) indicates a 30–percent incidence of permanent threshold shift (PTS) at the same threshold). The zone of influence (ZOI) (farthest distance from the source at which an animal is exposed to the EFD level referred to) for the Level A Harassment threshold is 52 m (172 ft).

Level B (non-injurious) Harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 μPa^2 s maximum EFD level in any 1/3–octave band above 100 Hz for toothed whales (e.g., dolphins). The ZOI for this threshold is 230 m (754 ft). A second criterion, 23 psi, has recently been established by NMFS for TTS when the explosive or animal approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. The ZOI for 23 psi is 222 m (728 ft). NMFS will apply the more conservative of these two.

Level B Harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of time. Threshold criteria for this particular type of harassment are currently still under debate. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1 μPa^2 s. However, due to the infrequency of the detonations, the potential variability in target locations, and the continuous movement of marine mammals off the northern Gulf, NMFS believes that behavioral modification from repeated exposures to the same animal is highly unlikely.

Comments and Responses

On July 12, 2007, NMFS published in the **Federal Register** a notice of a proposed IHA for EAFB's request to take marine mammals incidental to NEODS training exercises in the GOM, and requested comments regarding this request (See 72 FR 38061). During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommends NMFS grant the requested authorizations provided that Eglin AFB conduct all practicable monitoring and mitigation measures to afford the potentially affected marine mammal species adequate protection from serious and lethal injury.

Response: NMFS believes that the IHA includes all practicable monitoring and mitigation measures to avoid serious or lethal injury of marine mammals, and we believe that they will be effective. The radius around the site of the explosion where the animals could potentially be injured is 52 m, and animals would have to be significantly closer than that for the potential for serious injury or death to occur. MMOs will be monitoring a 460–m radius area for the entire 15 minutes leading up to the detonation and the operation will be postponed if animals are seen within the 230–dB ZOI or if large schools of fish, which could attract the delphinids, are seen within the ZOI.

Comment 2: The Commission recommends that NEODS training operations be suspended immediately if a seriously injured or dead marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the NEODS activities. Further,the Commission recommends that any suspension should remain in place until NMFS has (1) reviewed the situation and determined that further deaths or serious injuries are unlikely to occur or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with the Commission's recommendation and will include this provision in the IHA.

Comment 3: The Commission also resubmitted the identical comments it

submitted on the 2005 and 2006 NEODS IHA.

Response: NMFS stated the Commission's concerns and addressed them in the **Federal Register** notice announcing the issuance of the 2005 IHA (70 FR 51341; August 30, 2005), and they may be referenced there.

Numbers of Marine Mammals Estimated to be Harassed

Estimates of the potential number of Atlantic bottlenose dolphins and Atlantic spotted dolphins to be harassed by the training were calculated using the number of distinct firing or test events (maximum 30 per year), the ZOI for noise exposure, and the density of animals that potentially occur in the ZOI. The take estimates provided here do not include mitigation measures, which are expected to further minimize impacts to protected species and make injury or death highly unlikely.

The estimated number of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to the Level A Harassment threshold (205 dB re 1 μPa^2 s), are less than one (0.22 and 0.19, respectively) annually.

For Level B Harassment, two separate criteria were established, one expressed in dB re 1 μPa^2 s maximum EFD level in any 1/3–octave band above 100 Hz, and one expressed in psi. The estimated numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to 182 dB are 4 and 3 individuals, respectively. The estimated numbers potentially taken through exposure to 23 psi are also 4 and 3 individuals, respectively.

Possible Effects of Activities on Marine Mammal Habitat

NMFS anticipates no loss or modification to the habitat used by Atlantic bottlenose dolphins or Atlantic spotted dolphins in the EGTTR. The primary source of marine mammal habitat impact resulting from the NEODS missions is noise, which is intermittent (maximum 30 times per year) and of limited duration. The effects of debris (which will be recovered following test activities), ordnance, fuel, and chemical residues were analyzed in the NEODS Biological Assessment and the Air Force concluded that marine mammal habitat would not be affected.

Mitigation and Monitoring

Mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the ZOI. A trained, NMFS-approved observerwill be staged from the highest point possible on a support ship and have proper lines of communication to the Officer in Tactical Command. The survey area will be 460 m (1509 ft) in every direction from the target, which is twice the radius of the ZOI for Level B Harassment (230 m (755 ft)). To ensure visibility of marine mammals to observers, NEODS missions will be delayed if whitecaps cover more than 50 percent of the surface or if conditions exceed a Beaufort 3 sea state.

Pre-mission monitoring will be used to evaluate the test site for environmental suitability of the mission. Visual surveys will be conducted two hours, one hour, and the entire 15 minutes prior to the mission to verify that the ZOI (230 m (755 ft)) is free of visually detectable marine mammals and large schools of fish, and that the weather is adequate to support visual surveys. The observer will plot and record sightings, bearing, and time for all marine mammals detected, which would allow the observer to determine if the animal is likely to enter the test area during detonation. If a marine mammal appears likely to enter the test area during detonation, if large schools of fish are present, or if the weather is inadequate to support monitoring, the observer will declare the range fouled and the tactical officer will implement a hold until monitoring indicates that the test area is and will remain clear of detectable marine mammals.

Monitoring of the test area will continue throughout the mission until the last detonation is complete. The mission would be postponed if:

(1) Any marine mammal is visually detected within the ZOI (230 m (755 ft)). The delay would continue until the animal that caused the postponement is confirmed to be outside the ZOI (visually observed swimming out of the range).

(2) Any marine mammal is detected in the ZOI and subsequently is not seen again. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

(3) Large schools of fish are observed in the water within of the ZOI. The delay would continue until large fish schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge fails to explode, mitigation measures would continue while operations personnel attempt to recognize and solve the problem (e.g., detonate the charge).

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring, concentrating on the area down current of the test site, would commence immediately following each detonation and continue for at least two hours after the last detonation. The monitoring team would document and report to the appropriate marine animal stranding network any marine mammals killed or injured during the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the teams would be documented and reported to the Officer in Tactical Command.

Additionally, in the unlikely event that a seriously injured or dead marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the NEODS activities, training operations will be suspended and NMFS contacted immediately. This suspension would remain in place until the Service has (1) reviewed the situation and determined that further deaths or serious injuries are unlikely to occur or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Reporting

The Air Force will notify NMFS 2 weeks prior to initiation of each training session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, NMFS, within 24 hours. A summary of mission observations and test results, including dates and times of detonations as well as pre- and post-mission monitoring observations, will be submitted to the Southeast Regional Office (NMFS) and to the Division of Permits, Conservation, and Education, Office of Protected Resources (NMFS) within 90 days after the completion of the last training session.

Endangered Species Act

In a Biological Opinion issued on October 25, 2004, NMFS concluded that the NEODS training missions and their associated actions are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify critical habitat that has been designated for those species. NMFS has issued an incidental take statement (ITS) for NEODS for sea turtles pursuant to section 7 of the Endangered Species Act. The ITS

contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. This IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously.

National Environmental Policy Act

In 2005, NMFS prepared an Environmental Assessment (EA) on the Issuance of Authorizations to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida and subsequently issued a Finding of No Significant Impact (FONSI). This IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously. Therefore, preparation of an EIS on this action is not required by NEPA or its implementing regulations. However, in 2007, a supplemental EA was prepared to address new information on the effects to EFH and cumulative impacts to the physical and biological environment from other EAFB activities.

Conclusions

NMFS has issued an IHA to the Air Force for the NEODS training missions to take place at EAFB over a 1–year period. The issuance of this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has determined that the NEODS training, which entails up to six missions per year, including up to five live detonations per mission of approximately 5–lb (2.3 kg) net explosive weight charges to occur in approximately 60–foot (18 m) deep water from one to three nm off shore, will result in the Level B harassment of Atlantic bottlenose dolphins and Atlantic spotted dolphins (less than 0.0002 percent of the population for each species, and perhaps 1–2 percent of an inshore stock of bottlenose dolphin, if one of them were harassed) and will have a negligible impact on these marine mammal species and stocks. While behavioral modifications may be made by Atlantic bottlenose dolphins and Atlantic spotted dolphins to avoid the resultant acoustic stimuli, when the potential density of dolphins in the area and the required mitigation and monitoring are taken into consideration NMFS does expect any injury or mortality to result. The effects of the NEODS training are expected to be limited to short-term and localized TTS-related behavioral changes. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the NEODS test sites.

Authorization

As a result of these determinations, NMFS proposes to issue an IHA to the Air Force for NEODS training operations at EAFB, Florida, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 9, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–20230 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric AdministrationRIN: 0648–XD29

Gulf of Mexico Fishery Management Council (Council); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held October 29 - November 1, 2007.

ADDRESSES: The meetings will be held at the Beau Rivage, 875 Beach Blvd., Biloxi, MS 39530.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, October 31, 2007

2 p.m. - The Council meeting will begin with a review the agenda and minutes.

2:15 pm - 4:15 p.m. - Public testimony on exempted fishing permits (EFPs), if any, and Reef Fish Amendment 30A will be received.

4:15 - 5:15 p.m. - An Open Public Comment Period regarding any fishery issue of concern will be held. People wishing to speak before the Council should complete a public comment card prior to the comment period.

5:15 - 5:30 p.m. - A CLOSED SESSION on Personnel will be held.

Thursday, November 1, 2007

The Council will review and discuss reports from the previous two days' committee meetings as follows:

8:30 a.m. - 10:30 a.m. - Reef Fish Management;

10:30 a.m. - 10:45 a.m. - Joint Reef Fish/Mackerel/Red Drum;

10:45 a.m. - 11 a.m. - Data Collection;

11 a.m. - 11:15 a.m. - Budget/ Personnel;

11:15 a.m. - 11:30 a.m. - Spiny Lobster/Stone Crab Management;

1 p.m. - 1:30 p.m. - Red Drum Management;

1:30 p.m. - 2 p.m. - Shrimp Management;

2 p.m. - 2:15 p.m. - Habitat Protection.

2:15 p.m. - 3:15 p.m. - The Council will discuss Other Business items.

3:15 p.m. - 3:30 p.m. - The Council will conclude its meeting with Elections of Chairman and Vice-Chairman.

Committees

Monday, October 29, 2007

9:30 a.m. - 11:30 a.m. - Orientation Session for New Members.

1 p.m. - 5:30 p.m. - The Reef Fish Management Committee will meet to discuss the Scoping Document for Reef Fish Amendment 29 (Grouper IFQ), a Report on Marine Reserves, an Ecosystem Modeling Workshop Report, a Preliminary Public Hearing Draft of Reef Fish Amendment 30B, and a Draft Red Snapper Allocation Discussion Document.

Tuesday, October 30, 2007

8 a.m. - 12 p.m. - The Reef Fish Management Committee will continue with a review of Reef Fish Amendment 30A for Gray Triggerfish/Greater Amberjack and a Goliath Grouper Cooperative Research Project.

1:30 p.m. - 2 p.m. - The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss a Generic Amendment for Regulation of Offshore Aquaculture.

2 p.m. - 3 p.m. - The Data Collection Committee will meet to discuss reports by the SSC Select Committee on Revision of Marine Recreational Fishery Statistics Survey (MRFSS).

3 p.m. - 4 p.m. - Budget/Personnel Committee will meet to review the Status of 2007 Funding, the 2008 Council Operational Budget and hold a CLOSED SESSION on Personnel.

4 p.m. - 5:30 p.m. - The Red Drum Management Committee will meet to discuss Recommendations for Long-term Research by the Ad Hoc Review Panel for Red Drum.

Wednesday, October 31, 2007

8:30 a.m. - 11 a.m. - The Shrimp Management Committee will hear reports on the Status of the Shrimp Stocks and review data on the 2007 permits and effort.

11 a.m. - 12 p.m. - The Habitat Protection Committee will meet to discuss the Texas and Mississippi/ Louisiana Habitat Protection AP's recommendations.

1:30 p.m. - 2 p.m. - The Spiny Lobster/Stone Crab Management Committee will meet to discuss the Draft Public Scoping Document for Spiny Lobster Imported Size Limit.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 9, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–20168 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric AdministrationRIN: 0648–XD31

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting of the North Pacific Fishery Management Council's (Council) Halibut Charter Stakeholder Committee.

SUMMARY: The North Pacific Fishery Management Council Charter Halibut Stakeholder Committee will meet in Anchorage, AK.

DATES: The meetings will be held October 31 through November 2, 2007, 8:30 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the North Pacific Research Board, 1007 West 3rd Avenue, Suite 100, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review background documents and recommendations on permanent solution alternatives for analysis, as well as review actions taken by the North Pacific Fishery Management Council at its meeting on October 5, 2007.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: October 9, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–20170 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric AdministrationRIN: 0648–XD30

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Advisory Subpanel (SAS) will hold a work session by telephone conference, which is open to the public, to develop recommendations for the November 2007 Council meeting.

DATES: The telephone conference will be held Tuesday, October 30, 2007, from 9 a.m. to 12 p.m.

ADDRESSES: A listening station will be available at the Pacific Fishery Management Council, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review information in the Council's November meeting briefing book related to salmon management, and to develop comments and recommendations for consideration at the September Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the SAS for discussion, those issues may not be the subject of formal SAS action during this meeting. SAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SAS's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 9, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–20169 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric AdministrationRIN: 0648–XD28

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a joint meeting of the South Atlantic Fishery Management Council's Habitat and Environmental Protection Advisory Panel and Coral Advisory Panel.

SUMMARY: The South Atlantic Fishery Management Council will hold a joint meeting of its Habitat and Environmental Protection Advisory Panel and Coral Advisory Panel in Charleston, SC. See **SUPPLEMENTARY INFORMATION**.

DATES: The joint meeting will take place November 7–9, 2007. See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Charleston Marriott Hotel, 170 Lockwood Boulevard, Charleston, SC; telephone: (800) 968–3569 or (843) 723–3000; fax: (843) 723–0276.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Habitat AP and Coral AP will meet from 8:30 a.m. - 5 p.m. on November 7, 2007, from 8:30 a.m. - 5 p.m. on November 8, 2007, and from 8:30 a.m. - 1 p.m. on November 9, 2007.

Items for discussion at the joint advisory panel meeting include discussion and recommendations on proposed actions under the Comprehensive Ecosystem Amendment including: Establishment of Deepwater Coral Habitat Areas of Particular Concerns (HAPCs), compliance with the Essential Fish Habitat (EFH) Final Rule, Allowable Gear Areas for deepwater trawls, designation of areas within the proposed Coral HAPCs where golden crab traps can continue to be used, and discussion and recommendations on new EFH and EFH-HAPC designations. In addition, the advisory panels will review, to the extent possible, the material in the draft Fishery Ecosystem Plan and provide recommendations on EFH conservation and restoration and regional data needs. The advisory panels will also update the Council's Energy Policy to highlight environmental information needs for Alternative Energy development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. equests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 9, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–20167 Filed 10–12–07; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of a Currently Approved Information Collection

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Brooke Nicholas, 202–606–6627. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov*.

Comments: A 60-day public comment Notice was published in the **Federal Register** on August 2, 2007. The comment period for this notice has elapsed and no comments were received.

SUPPLEMENTARY INFORMATION:

Description: The Corporation is strongly committed to making its performance measurement and management systems more results oriented in order to strengthen the accountability and performance of its programs. As part of its effort to do so, there is a need to collect outcome information regarding the Corporation's AmeriCorps programs consisting of AmeriCorps*State and National, AmeriCorps*VISTA, and AmeriCorps*National Civilian Community Corps (NCCC). Information on program performance will be informed by a series of surveys of a sample of AmeriCorps members and sub-grantee organizations that deliver services.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Performance Measurement in AmeriCorps.

OMB Number: 3045–0094.

Frequency: Annual.

Affected Public: Individuals and households, community and faith-based organizations, non-profits, state and local government and education institutions.

Number of Respondents: 10,000.

Estimated Time Per Respondent: Ten minutes

Total Burden Hours: 1,667 hours.

Total Burden Cost (capital/startup): None.

Total Annual Cost (operating/maintaining systems or purchasing services): None.

Dated: October 4, 2007.

LaMonica Shelton,

Associate Director for Policy and Communications, Department of Research and Policy Development.

[FR Doc. E7–20085 Filed 10–12–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Uniformed Services University of the Health Sciences; Quarterly Meeting Notice

AGENCY: Uniformed Services University of the Health Sciences (USU).

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) announcement of the following meeting:

Name of Committee: Board of Regents of the Uniformed Services University of the Health Sciences.

Date of Meeting: November 6, 2007.

Location: Board of Regents Conference Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

Times: 8 a.m. to 1 p.m. (Open Session). 1 p.m. to 2 p.m. (Closed Session).

Proposed Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held August 7, 2007; acceptance of administrative reports; approval of faculty appointments and promotions; and the awarding of post-baccalaureate degrees as follows: Masters of Science in Nursing, and masters and doctoral degrees in the biomedical sciences and public health. The President, USU; Dean, USU School of Medicine; Acting Dean, USU Graduate School of Nursing; Armed Forces Radiobiology Research Institute; and the Director, U.S. Military Cancer Institute will also present reports. These actions are necessary for the University to remain an accredited medical school and to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

SUPPLEMENTARY INFORMATION: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, this meeting is open to the public. Interested persons may submit a written statement for consideration by the Board of Regents. Individuals persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chair and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the open portion of the November 2007 meeting or at a future meeting.

For further Information and Base Access Procedures Contact: Janet S. Taylor, Designated Federal Officer, 301.295.3066.

Dated: October 9, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–5064 Filed 10–12–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Implementation of the Base Closure and Realignment (BRAC) 2005 Decisions and Related Actions at Eglin Air Force Base (AFB), FL

AGENCY: Department of the Air Force.

ACTION: Supplemental Notice of Intent (NOI).

SUMMARY: This supplemental NOI is being issued pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing procedural provisions of NEPA (40 Code of Federal Regulation (CFR) parts 1500–1508), and Air Force policy and procedures (32 CFR part 989). This supplemental NOI is issued to advise the public that the Air Force intends to further publicly scope information necessary to complete preparation of an EIS for the proposed BRAC activities at Eglin AFB, FL.

This supplements the initial NOI which appeared in the **Federal Register** July 28, 2006 [**Federal Register**: July 28, 2006 (Volume 71, Number 145), page 42838–42839].

In the year since the initial NOI was published and initial scoping meetings were held, the Air Force has developed additional information that bears on the proposal and its impacts. The Air Force will present this additional information to the public and solicit comments. Public input is important to determining the scope of issues to be addressed and for identifying significant issues that were not known when the initial NOI was published.

The supplemental scoping meetings will be held in a ''Town Hall'' format allowing interested parties to review information and related materials. Oral and written comments presented at the public meetings, as well as written comments received by the Air Force throughout the EIS process, will be considered and made a part of the administrative record.

All the information and comments gathered in response to the initial NOI remain in the record, and there is no need to repeat information submitted at that time.

DATES: The BRAC scoping update meetings will be held as follows:

November 6, 2007, 6:30–9:30 p.m.; Comfort Inn Conference Center, 8700 Navarre Parkway, Navarre, FL 32566, and November 7, 2007, 6:30–9:30 p.m.; Niceville High School, 800 E. John Sims Parkway, Niceville, FL 32578.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Mr. Michael Spaits, Public Affairs, 96 CEV–PA, Eglin AFB, FL 32542–5000 (PH: 850–882–2878; *mike.spaits@eglin.af.mil*).

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–20278 Filed 10–12–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 14, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 10, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.
Title: Impact Evaluation of the DC Opportunity Scholarship Program.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:

Responses: 8,377.
Burden Hours: 8,279.

Abstract: The DC Opportunity Scholarship Program is a five year school choice program that provides scholarships for children in low-income families in Washington DC. This evaluation uses a randomized control trial to compare the outcomes of eligible applicants who received scholarships to eligible applicants who did not receive a scholarship.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3509. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20256 Filed 10–12–07; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 14, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 10, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of the Chief Financial Officer

Type of Review: Extension.
Title: Streamlined Process for Education Department General Administrative Regulations (EDGAR) Approved Grant Applications.
Frequency: As necessary.
Affected Public: Businesses or other for-profit; Not-for-profit institutions;

State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 1.

Abstract: Although this is rarely used, this process allows grant programs, in a subsequent year of the approved collection, to change their program specific criteria to EDGAR criteria. This process generally relates to programs that have used the 1890–0001 process in a previous year but wish to move one or more criterion to EDGAR in a subsequent year of their approved application. If the program still has program specific requirements, they cannot use the 1890–0009 process and, therefore, must use this process ONLY if some or all program specific criteria will be changing to EDGAR criteria, there are no other substantive changes to the approved application, and the application still contains a program specific requirement. No public comment period notices are required since the Master Plan covers this process, and the individual applications account for their burden under their individual OMB control numbers. ED submits these requests via the OMB83 C (change worksheet) process. A copy of the proposed selection criteria to the approved application is also submitted for review. Based on the original OMB/ED agreement, the clearance time for this process is 10 days at OMB.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3370. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20257 Filed 10–12–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 14, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 10, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 912.

Abstract: Form RSA–509 will be used to analyze and evaluate the Protection and Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3508. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20258 Filed 10–12–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 14, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 10, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Client Assistance Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 56.
Burden Hours: 896.

Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to individuals seeking or receiving services from programs and projects authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3507. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20259 Filed 10–12–07; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 07–179; MM Docket No. 95–31]

FCC Adopts Application Limit for NCE FM New Station Applications in October 12–October 19, 2007 Window

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission adopts an application limit in the noncommercial educational FM broadcast application filing window scheduled for October 12–October 19, 2007. The purpose of the limit is to permit the expeditious processing of applications filed in the window and deter speculative filings. The Commission concludes that an appropriate limit for any party is an attributable interest in no more than ten applications for new noncommercial educational FM broadcast stations filed in the window, excluding major modification applications and pending applications.

DATES: October 12–October 19, 2007 Filing Window for Noncommercial Educational New Station Applications.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Internet address: *http://www.fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, 202–418–2785, Audio Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of a *Public Notice* adopted on October 10, 2007, and released on October 10, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Summary of Public Notice: In this document, released on October 10, 2007, the Commission adopts a ten-application limit on noncommercial educational (''NCE'') FM new station and major change applications filed by any party during the filing window opening on Friday, October 12, 2007 and closing on Friday, October 19, 2007 for FM reserved band (channels 201–220).

On August 9, 2007, the Commission issued a *Public Notice* (the ''*Notice*'') seeking comment on this proposed ten-application limit (published at 72 FR 47039 on August 22, 2007). More than 10,000 comments were filed in response to the *Notice.* The overwhelming majority of the commenters supported the proposed limit of ten new station applications filed by any party during the window. Accordingly, the Commission concludes in this *Public Notice* that an application limit is a lawful and appropriate procedural safeguard to permit the expeditious processing of the window-filed applications with limited Bureau resources and to deter speculation. Our examination of the record confirms our concern that failure to establish a limit on the number of NCE FM applications that a party may file in the window

would lead to a large number of speculative filings, creating the potential for extraordinary procedural delays. The Commission finds that a ten-application limit is consistent with the localism and diversity goals reflected in the NCE FM point system and appropriately balances our goals of deterring speculative filings, facilitating the expeditious processing of window-filed applications with limited Commission resources, and providing interested parties with a meaningful opportunity to file for NCE FM new station licenses.

We acknowledge the concern expressed by some commenters about the potential for attempts to circumvent the application limit. We note that the Bureau retains the discretion to conduct investigations and, where there is a substantial and material question of fact regarding real parties in interest, the Commission will designate applications for hearing to determine whether the applications comply with the Commission's rules and policies.

Effective Date of Public Notice. The Commission finds that there is good cause to make this *Public Notice* effective immediately. See 5 U.S.C. 553(d)(3). The Commission's experience with the 2003 FM translator window demonstrates that there is a strong and unmet demand for scarce FM spectrum and that applicants will aggressively pursue all new radio station licensing opportunities. The Commission is concerned that postponing the window will provide an opportunity for parties to develop and implement filing strategies to circumvent the limit on applications and to thwart the public interest benefits that the ten-application cap is intended to achieve. Moreover, the Commission announced this filing window more than six months ago. Applicants have relied on this window closing on October 19, 2007, a date that will be used to establish certain comparative qualifications among competing applicants. Accordingly, the Commission is reluctant to modify this well-publicized filing deadline. Finally, postponing the window would require the Commission to extend the freeze on reserved band and certain non-reserved band minor change application filings. The Commission concludes that such an extension would impose unreasonable burdens on many radio licensees.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

Pursuant to Section 605(b) of the RFA, we certify that the application limit adopted in this document imposes no significant economic impact on a substantial number of small entities. The application limit will benefit small entities seeking to establish a new NCE FM service on a local or regional basis by expediting the review and processing of applications filed during the filing window opening on Friday, October 12, 2007. In the Commission's rulemaking proceeding on comparative standards for NCE applicants, the Commission reserved the right to establish by *Public Notice* a limit on the number of NCE applications by a party in a filing window. In the *Notice*, the Commission explained that numerous entities involved in NCE FM operations urged the agency to establish an application limit for the filing window to prevent mass filings of speculative applications. The vast majority of comments filed in response to the *Notice* agreed with the Commission's tentative conclusion that ten applications is an appropriate limit to deter speculative applications and facilitate the prompt processing of applications. Based on the record in this proceeding, we have concluded that a lower limit would not effectively meet the demand for new NCE FM channels, whereas a higher limit would impose unacceptable processing delays on all applicants, overriding any potential benefits to a few applicants interested in filing more than ten applications in this window. The limit excludes both pending applications by NCE FM stations and applicants and new major change applications by existing NCE FM stations seeking to modify their existing authorizations, so the limit involves no detriment to those applicants. This document and final RFA certification will be sent to the Chief Counsel for Advocacy of the SBA.

The Commission has authority to collect these applications under OMB Control # 3060–0034.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. E7–20300 Filed 10–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, October 16, 2007, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Memorandum and resolution re: Proposed FDIC Liquidation Investment Policy.

Memorandum and resolution re: Final Rule Adopting Amendment to Part 344 to Extend the Time Period to Report Quarterly Personal Securities Transactions.

Memorandum and resolution re: Proposed Amendments to Annual Audit and Reporting Requirements (Part 363) and Related Technical Amendment (Part 308, Subpart U).

Memorandum and resolution re: Notice of New and Revised Privacy Act Systems of Records.

Discussion Agenda:

Memorandum and resolution re: Interagency Final Rule Regarding Affiliate Marketing—Section 214 of the Fair and Accurate Credit Transactions Act of 2003.

Memorandum and resolution re: Interagency Final Rule Regarding Identity Theft Red Flags and Address Discrepancies under Section 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed

to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: October 9, 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E7–20175 Filed 10–12–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Belvedere SoCal, San Francisco, California; to acquire 100 percent of the voting shares of Spectrum Bank, Irvine, California; and Belvedere Capital Partners II LLC, and Belvedere Capital Fund II LP, both of San Francisco, California, to indirectly acquire up to 67 percent of the voting shares of Spectrum Bank.

Board of Governors of the Federal Reserve System, October 10, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–20247 Filed 10–12–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Summit Financial Group, Inc., Moorefield, West Virginia; to acquire 100 percent of the voting shares of Greater Atlantic Financial Corp., and thereby indirectly acquire Greater Atlantic Bank, both of Reston, Virginia, and thereby engage in the operation of a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 10, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–20248 Filed 10–12–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 072 3142]

Elation Therapy; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Elation Therapy, File No. 071 3142,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Laura DeMartino (202) 326-3030, Bureau of Consumer Protection, Room NJ-2122, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Elation Therapy, Inc., a corporation, and Robert Rutledge, individually and as an officer of Elation Therapy (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Elation Therapy Natural Progesterone Cream, a transdermal cream that, according to its label, contains, among other ingredients, natural progesterone. According to the FTC complaint, respondents represented that Elation Therapy Natural Progesterone Cream: (1) is effective in preventing, treating, or curing osteoporosis; (2) is effective in preventing or reducing the risk of estrogen-inducted endometrial (uterine) cancer; and (3) does not increase the user's risk of developing breast cancer and/or is effective in preventing or reducing the user's risk of developing breast cancer. The complaint alleges that respondents failed to have substantiation for these claims. The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating claims that any progesterone product or any other dietary supplement, food, drug, device or health-related service or program is effective in preventing, treating, or curing osteoporosis, in preventing or reducing the risk of estrogen-induced endometrial cancer or breast cancer, or in the mitigation, treatment, prevention, or cure of any disease, illness, or health condition; that it does not increase the user's risk of developing breast cancer, is safe for human use, or has no side effects; or about its health benefits, performance, efficacy, safety, or side effects.

Part II of the proposed order prevents respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the proposed order provides that the order does not prohibit respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure and changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–20269 Filed 10–12–07: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 072 3144]

The Green Willow Tree LLC, et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Green Willow Tree, File No. 071 3144,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be

mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Laura DeMartino (202) 326-3030, Bureau of Consumer Protection, Room NJ-2122, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from The Green Willow Tree LLC, a limited liability company, and Robert Burns, individually and as a member and manager of The Green Willow Tree (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Progesta Care Plus, EST, and Restored Balance, transdermal creams that, according to their labels, contain, among other ingredients, natural progesterone. According to the FTC complaint, respondents represented that Progesta Care Plus, EST, and Restored Balance: (1) Are effective in preventing, treating, or curing osteoporosis; (2) are effective in preventing or reducing the risk of estrogen-inducted endometrial (uterine) cancer; and (3) do not increase the user's risk of developing breast cancer and/or are effective in preventing or reducing the user's risk of developing breast cancer. The complaint alleges that respondents failed to have substantiation for these claims. The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating claims that any progesterone product or any other dietary supplement, food, drug, device or health-related service or program is effective in preventing, treating, or curing osteoporosis, in preventing or reducing the risk of estrogen-induced endometrial cancer or breast cancer, or in the mitigation, treatment, prevention, or cure of any disease, illness, or health condition; that it does not increase the user's risk of developing breast cancer, is safe for human use, or has no side effects; or about its health benefits, performance, efficacy, safety, or side effects.

Part II of the proposed order prevents respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the proposed order provides that the order does not prohibit respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure and changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–20272 Filed 10–12–07: 8:45 am]

[BILLING CODE 6750–01–S]

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FEDERAL TRADE COMMISSION

[File No. 072 3145]

Health Science International, Inc., et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Health Science International, File No. 071 3145,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Laura DeMartino (202) 326-3030, Bureau of Consumer Protection, Room NJ-2122, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Health Science International, Inc., a corporation, and David Martin, individually and as an officer of Health Science International (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Serenity for Women Natural Progesterone Cream, a transdermal cream that, according to its label, contains, among other ingredients, natural progesterone. According to the FTC complaint, respondents represented that Serenity for Women Natural Progesterone Cream: (1) is effective in preventing, treating, or curing osteoporosis; (2) is effective in preventing or reducing the risk of estrogen-inducted endometrial (uterine) cancer; and (3) does not increase the user's risk of developing breast cancer and/or is effective in preventing or reducing the user's risk of developing breast cancer. The complaint alleges that respondents failed to have substantiation for these claims. The complaint also alleges that respondents misrepresented that clinical testing proved that Serenity for Women Natural Progesterone is effective in preventing, treating, or curing osteoporosis. The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating claims that any progesterone product or any other dietary supplement, food, drug, device or health-related service or program is effective in preventing, treating, or curing osteoporosis, in preventing or reducing the risk of estrogen-induced endometrial cancer or breast cancer, or in the mitigation, treatment, prevention, or cure of any disease, illness, or health condition; that it does not increase the user's risk of developing breast cancer, is safe for human use, or has no side effects; or about its health benefits, performance, efficacy, safety, or side effects.

Part II of the proposed order prevents respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the proposed order provides that the order does not prohibit respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure and changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–20277 Filed 10–12–07: 8:45 am]

[BILLING CODE 6750–01–S]

FEDERAL TRADE COMMISSION

[File No. 072 3146]

Shelly Black, individually and doing business as Progesterone Advocates Network; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Progesterone Advocates Network, File No. 071 3146,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Laura DeMartino (202) 326-3030, Bureau of Consumer Protection, Room NJ-2122, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Shelly Black, an individual trading and doing business as Progesterone Advocates Network (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Nature's Precise Cream, a transdermal cream that, according to its label, contains, among other ingredients, natural progesterone. According to the FTC complaint, respondent represented that Nature's Precise Cream: (1) is effective in preventing, treating, or curing osteoporosis; (2) is effective in preventing or reducing the risk of estrogen-inducted endometrial (uterine) cancer; and (3) does not increase the user's risk of developing breast cancer and/or is effective in preventing or reducing the user's risk of developing breast cancer. The complaint alleges that respondent failed to have substantiation for these claims. The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating claims that any progesterone product or any other dietary supplement, food, drug, device

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

or health-related service or program is effective in preventing, treating, or curing osteoporosis, in preventing or reducing the risk of estrogen-induced endometrial cancer or breast cancer, or in the mitigation, treatment, prevention, or cure of any disease, illness, or health condition; that it does not increase the user's risk of developing breast cancer, is safe for human use, or has no side effects; or about its health benefits, performance, efficacy, safety, or side effects.

Part II of the proposed order prevents respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the proposed order provides that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts IV through VIII require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of her personnel; to notify the Commission of changes in corporate structure and changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–20276 Filed 10–12–07: 8:45 am]

[BILLING CODE 6750–01–S]

FEDERAL TRADE COMMISSION

[File No. 072–3140]

Lawrence and Stephanie Jordan, individuals trading and doing business as Springboard and Pro Health Labs; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Pro Health Labs, File No. 071 3140,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at*http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at*http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Laura DeMartino (202) 326-3030, Bureau of Consumer Protection, Room NJ-2122, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Lawrence Jordan and Stephanie Jordan, individuals trading and doing business as Springboard and Pro Health Labs (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of ProBalance and ProBalance Plus, transdermal creams that, according to their labels, contain, among other ingredients, natural progesterone. According to the FTC complaint, respondents represented that ProBalance and ProBalance Plus: (1) Are effective in preventing, treating, or curing osteoporosis; (2) are effective in preventing or reducing the risk of estrogen-inducted endometrial (uterine) cancer; and (3) do not increase the user's risk of developing breast cancer and/or are effective in preventing or reducing the user's risk of developing breast cancer. The complaint alleges that respondents failed to have substantiation for these claims. The complaint also alleges that respondents misrepresented that clinical testing proved that ProBalance and ProBalance Plus are effective in preventing or reducing the risk of estrogen-induced endometrial (uterine) cancer and breast cancer. The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating claims that any progesterone product or any other dietary supplement, food, drug, device or health-related service or program is effective in preventing, treating, or curing osteoporosis, in preventing or reducing the risk of estrogen-induced endometrial cancer or breast cancer, or in the mitigation, treatment, prevention, or cure of any disease, illness, or health condition; that it does not increase the user's risk of developing breast cancer, is safe for human use, or has no side effects; or about its health benefits, performance, efficacy, safety, or side effects.

Part II of the proposed order prevents respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the proposed order provides that the order does not prohibit respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure and changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–20275 Filed 10–12–07: 8:45 am]

[BILLING CODE 6750–01–S]

FEDERAL TRADE COMMISSION

[File No. 072 3143]

Merilou Barnekow, an individual trading and doing business as Women's Menopause Health Center; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Women's Menopause Health Center, File No. 071 3143,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Laura DeMartino (202) 326-3030, Bureau of Consumer Protection, Room NJ-2122, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Merilou Barnekow, an individual trading and doing business as Women's Menopause Health Center (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Preserve Progesterone Cream and Return to Eden Progesterone Cream, transdermal creams that, according to their labels, contain, among other ingredients, natural progesterone. According to the FTC complaint, respondent represented that Preserve Progesterone Cream and Return to Eden Progesterone Cream: (1) are effective in preventing, treating, or curing osteoporosis; (2) are effective in preventing or reducing the risk of estrogen-inducted endometrial (uterine) cancer; and (3) do not increase the user's risk of developing breast cancer and/or are effective in preventing or reducing the user's risk of developing breast cancer. The complaint alleges that respondent failed to have substantiation for these claims. The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating claims that any progesterone product or any other dietary supplement, food, drug, device or health-related service or program is effective in preventing, treating, or curing osteoporosis, in preventing or reducing the risk of estrogen-induced endometrial cancer or breast cancer, or in the mitigation, treatment, prevention, or cure of any disease, illness, or health condition; that it does not increase the user's risk of developing breast cancer, is safe for human use, or has no side effects; or about its health benefits, performance, efficacy, safety, or side effects.

Part II of the proposed order prevents respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the proposed order provides that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts IV through VIII require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of her personnel; to notify the Commission of changes in corporate structure and changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–20271 Filed 10–12–07: 8:45 am]

[BILLING CODE 6750–01–S]

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250]

General Services Administration Acquisition Regulation; Information Collection; Zero Burden Information Collection Reports

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding zero burden information collection reports. The clearance currently expires on August 31, 2007.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: December 14, 2007.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst, Contract Policy Division, at telephone (202) 219–1813 or via e-mail to *william.clark @gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process.

GSA has published rules in the **Federal Register** that fall under information collection 3090–0250. The rule that prescribed clause 552.238–70 ''Identification of Electronic Office Equipment Providing Accessibility for the Handicapped'' was published at 56 FR 29442, June 27, 1991, titled ''Implementation of Public Law 99–506'', with an effective date of July 8, 1991; and Clause 552.238–74 ''Industrial Funding Fee and Sales Reporting'' published at 68 FR 41286, July 11, 2003.

B. Annual Reporting Burden

None.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports, in all correspondence.

Dated: October 5, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E7–20255 Filed 10–12–07; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, November 9, 2007, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Eisenberg Conference Center, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Deborah Queenan, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1330. For press-related information, please contact Karen Migdail at (301) 427–1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144, no later than November 2, 2007. The agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850. Her phone number is (301) 427–1554.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Advisory Council for Healthcare Research and Quality was established in accordance with Section 921 (now Section 931) of the Public Health Service Act (42 U.S.C. 299c). In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve the outcomes, reduce the costs of health care services, improve access to such services through scientific research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members.

II. Agenda

On Friday, November 9, the Council meeting will convene at 9 a.m., with the call to order by the Council Chair and approval of previous Council minutes. The Director, AHRQ, will present her update on AHRQ's current research, programs, and initiatives. The agenda will include a discussion of the National Healthcare Quality and Disparities Reports, needed research on Health Care Value and Capacity Building. The official agenda will be available on AHRQ's Web site at *http://www.ahrq.gov* no later than November 2, 2007.

Dated: October 5, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–5057 Filed 10–12–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0098]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 14, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0497. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Focus Groups as Used by the Food and Drug Administration—(OMB Control Number 0910–0497)—Extension

Focus groups provide an important role in gathering information because they allow for a more in-depth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research toolhave three major purposes:

- To obtain consumer information that is useful for developing variables and measures for quantitative studies,

• To better understand consumers' attitudes and emotions in response to topics and concepts, and

• To further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine their ideas, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

In the **Federal Register** of March 27, 2007 (72 FR 14279), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for completing the forms for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (Includes Screening)	Total Hours
Center for Biologics Evaluation and Research	May use focus groups when appropriate	1	5	9	1.58	71
Center for Drug Evaluation and Research	Varies (e.g., direct-to-consumer Rx drug promotion, physician labeling of Rx drugs, medication guides, over-the-counter drug labeling, risk communication)	10	200	9	1.58	2,844
Center for Devices and Radiological Health	Varies (e.g., FDA Seal of Approval, patient labeling, tampons, online sales of medical products, latex gloves)	4	16	9	2.08	300
Center for Food Safety and Applied Nutrition	Varies (e.g., food safety, nutrition, dietary supplements, and consumer education)	8	40	9	1.58	569
Center for Veterinary Medicine	Varies (e.g., animal nutrition, supplements, labeling of animal Rx)	5	25	9	2.08	468
Total		28	286	9	1.78	4,252

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Annually, FDA projects about 28 focus group studies using 186 focus groups lasting an average of 1.78 hours each. FDA has allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs.

Dated: October 9, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–20291 Filed 10–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of Health and Human Services under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services, when that research is also regulated by FDA.

Date and Time: The meeting will be held on Tuesday, November 27, 2007, from 8 a.m. to 5:30 p.m. and Wednesday, November 28, 2007, from 8 a.m. to 6 p.m.

Location: Hilton, Washington DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, e-mail:*Carlos.Peña@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up to date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 27, 2007, in response to the Pediatric Advisory Committee's 2005 request for specific updates after 2 additional years of influenza seasons, the committee will receive information on adverse event reports, focusing on neuropsychiatric and behavioral events, for Tamiflu (OSELTAMIVIR). On November 28, 2007, the Pediatric Advisory Committee will hear and discuss reports by the agency, as mandated in Section 17 of

the Best Pharmaceuticals for Children Act (BPCA), on adverse event reports for Serevent (SALMETEROL), Provigil (MODAFINIL), Azopt (BRINZOLAMIDE), Bextaxon (LEVOBETAXOLOL), Emtrivia (EMTRICITABINE), and Gleevec (IMATINAB MESYLATE). The Pediatric Advisory Committee will also hear about and discuss the Pediatric Initiatives between FDA and the European Medicines Agency.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 5, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2: p.m. on November 27, 2007 and 11 a.m. to 11:30 a.m. and 3 p.m. to 3:30 p.m. on November 28, 2007. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 26, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 29, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dr. Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at*http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 8, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–20302 Filed 10–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of Health and Human Services under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services , when that research is also regulated by FDA.

Date and Time: The meeting will be held on Thursday, November 29, 2007, from 8 a.m. to 4 p.m.

Location: Hilton, Washington DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, e-mail: *Carlos.Peña@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Pediatric Advisory Committee will hear and discuss issues related to FDA's draft guidance for Industry entitled ''Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling,'' that published in the **Federal Register** of Tuesday, February 8, 2005 (70 FR 6697). As part of the review and consideration of public comments received by FDA in response to this draft guidance, the Pediatric Advisory Committee will hear and discuss information on: Labeling of drugs for use by lactating women; breastfeeding physiology, benefits, and current research; the physiology and pharmacology of drug transfer into breast milk; and ethical issues related to studying breastfeeding mother/infant pairs.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material will be available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 5, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 26, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine

the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 29, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dr. Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at*http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 8, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–20304 Filed 10–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0367]

Draft Guidance for Industry on Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval.'' The purpose of this guidance is to inform industry of FDA's current thinking regarding appropriate clinical study designs to evaluate antibacterial drugs, and to ask sponsors to amend ongoing or completed studies accordingly. This guidance is in response to a number of public discussions in recent years regarding the use of active-controlled studies designed to show noninferiority as a basis for approval of antibacterial drug products.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by December 14, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Edward Cox, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6412, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval.'' Most antibacterial drugs have been approved based on active-controlled noninferiority trials. There have been a number of public discussions in recent years on the use of noninferiority studies to support regulatory approval of antibacterial drug products. Some of these discussions have focused on specific diseases such as acute bacterial sinusitis, acute bacterial otitis media, and acute bacterial exacerbation of chronic bronchitis. These public discussions have contributed to FDA's evolving understanding of the science of clinical trials and, in particular, the appropriate role of active-controlled studies designed to show noninferiority in the development of antibacterial drug products.

This draft guidance recommends that sponsors provide justification for the treatment effect size and the proposed noninferiority margin for all antibacterial development programs for which approval will rely on noninferiority studies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the use of noninferiority studies to support approval of antibacterial drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively, and the collection of information under the guidance for industry Special Protocol Assessment has been approved under OMB control number 0910–0470.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 9, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–20282 Filed 10–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0388]

Draft Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' This draft guidance is intended to assist the dietary supplement industry in complying with the serious adverse events reporting and recordkeeping requirements prescribed for dietary supplement manufacturers, packers, and distributors by the Dietary Supplement and Nonprescription Drug Consumer Protection Act. Separate guidance, issued by the Center for Drug Evaluation and Research on reporting for nonprescription (over-the-counter (OTC)) human drugs marketed without an approved application, is announced elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on the draft guidance document, including comments regarding proposed collection of information, by December 14, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist the office in processing your request, or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the draft guidance, including comments regarding proposed collection of information, to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Vasilios Frankos, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' On December 22, 2006, the President signed into law the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA) (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and non-prescription drugs marketed without an approved application. The draft guidance document contains questions and answers relating to the new requirements under the DSNDCPA, concerning the mandatory reporting to FDA of serious adverse events associated with dietary supplements, the minimum data elements to be submitted in such reports, and records of serious and non-serious adverse events reported to a dietary supplement manufacturer, packer, or distributor.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors of dietary supplements marketed in the United States.

The draft guidance presents FDA's recommendations for complying with the dietary supplement adverse event reporting and recordkeeping requirements of the act, as amended by the DSNDCPA. These requirements become effective on December 22, 2007.

A. Reporting

Under section 761(b)(1) of the act (21 U.S.C. 379aa–1(b)(1)), the manufacturer, packer, or distributor whose name (under section 403(e)(1) of the act (21 U.S.C. 343(e)(1))) appears on the label of a dietary supplement marketed in the United States is required to submit to FDA any serious adverse event report it receives regarding use of the dietary supplement in the United States, accompanied by a copy of the product label. In addition, under section 761(c)(2) of the act, the submitter of the serious adverse event report (referred to in the statute as the ''responsible person'') is required to submit to FDA a followup report of any related new medical information the responsible person receives within 1 year of the initial report.

The draft guidance discusses how, when, and where to submit serious

adverse event reports for dietary supplements and followup reports of new medical information. In accordance with the statutory requirements that serious adverse event reports for dietary supplements be submitted via MedWatch (section 761(d) of the act) and that FDA consolidate all information related to a serious adverse event into a single report (section 761(c)(3) of the act), the draft guidance directs the responsible person to submit serious adverse event reports on MedWatch Form 3500A and to attach a copy of the initial serious adverse event report on Form 3500A as part of any followup report of new medical information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Serious adverse event reports for dietary supplements (21 U.S.C. 379aa–1(b)(1))	80	12	960	2	1,920
Followup reports of new medical information (21 U.S.C. 379aa–1(c)(2))	20	12	240	1	420
Total					2,160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

B. Reporting Burden

Because mandatory reporting of serious adverse events for dietary supplements does not become effective until December 22, 2007, FDA has no data on mandatory dietary supplement adverse event reports from past years to use in developing a burden estimate. However, FDA currently collects voluntarily-submitted adverse event reports for dietary supplements. Industry, health care providers, and consumers voluntarily submit several thousand reports annually to FDA's Center for Food Safety and Applied Nutrition (CFSAN) through the CFSAN Adverse Events Reporting System (CAERS), which contains reports of adverse events associated with conventional foods, dietary supplements, and cosmetics. According to a Congressional Budget Office Cost Estimate (Ref. 1), in 2005 CAERS received almost 500 reports of adverse events suspected to be related to dietary supplements.

Only manufacturers, packers, and distributors of dietary supplements are required to report adverse events for these products to FDA, and only if the firm's name appears on the label of the dietary supplement associated with the adverse event. Moreover, reporting is required only for those adverse events defined as ''serious.'' FDA does not know how many of the 500 reports of dietary supplement adverse events voluntarily submitted in 2005 would have been considered serious, nor how many of these reports originated from or were reported to the manufacturer, packer, or distributor whose name appears on the label of the dietary supplement associated with the adverse event. As a rough estimate for planning purposes, CAERS staff estimate that they will receive about 80 serious adverse event reports relating to dietary supplements each month. Thus, we estimate that the number of dietary supplement serious adverse event reports submitted to FDA annually will total 960 reports (12 x 80 reports per month). FDA requests comments on this estimate.

FDA's Center for Drug Evaluation and Research estimates it will take respondents a total of 2 hours to collect information about a serious adverse event associated with an over-the-counter drug marketed without an approved application and report the information to FDA on MedWatch Form 3500A. That time burden estimate is based on FDA's knowledge of the adverse drug experience reports submitted to the agency for nonprescription drug products marketed under an approved application, including knowledge about the time needed to prepare the reports. FDA believes that the time for a dietary supplement firm to collect information about a serious adverse event associated with a dietary supplement and report the information to FDA will be approximately the same, as MedWatch Form 3500A will be used in both cases; therefore, we also estimate this time burden at 2 hours per report. The estimated total annual burden for dietary supplement serious adverse event reports is shown in row 1 of table 1 of this document.

If a firm that has submitted a serious adverse event report receives new medical information related to the serious adverse event within 1 year of submitting the initial report, the firm must provide the new medical information to FDA in a followup report. Given our lack of experience with mandatory dietary supplement adverse event reporting, we do not have any information on the number of followup reports of new medical information that will be submitted to FDA each year. We expect followup medical information to be reported for some percentage of the 960 serious adverse event reports we estimate receiving annually. In the absence of data that would support a more precise estimate, we will assume that 25 percent of the 960 serious adverse event reports for dietary supplements will have a followup report submitted. FDA requests comments on this estimate. We estimate that each followup report will require an hour to assemble and submit, including the time needed to copy and attach the initial serious adverse event report as recommended in the draft guidance. We assume the followup report will take less time than the initial serious adverse event report, as the responsible person will not need to fill out Form 3500A for the followup report. FDA requests comments on whether the burden estimate of 1 hour is reasonable for this information collection. The estimated total annual burden for followup reports of new medical information is shown in row 2 of table 1 of this document.

C. Recordkeeping

Section 761(e)(1) of the act requires that responsible persons maintain records related to dietary supplement adverse event reports they receive, whether or not the adverse event is serious. Under the statute, the records must be retained for a period of 6 years. The draft guidance provides FDA's recommendations as to what records

industry should maintain to satisfy the statutory recordkeeping requirement.

The guidance recommends that the responsible person document its attempts to obtain the minimum data elements for a serious adverse event report. Along with these records, the guidance recommends that the responsible person keep the following other records: (1) Communications between the responsible person and the initial reporter of the adverse event and with any other person(s) who provided information about the adverse event; (2) (for serious adverse events only) the responsible person's serious adverse event report to FDA on MedWatch Form 3500A, with attachments; (3) any new medical information about the adverse event received by the responsible person; (4) (for serious adverse events only) any reports to FDA of new medical information related to the serious adverse event report. We estimate that assembling and filing these records, including any necessary photocopying, will take approximately 0.5 hours per adverse event report received by the responsible person.

Once the documents pertaining to an adverse event report have been assembled and filed, FDA expects the records retention burden to be minimal, as the agency believes most establishments would normally keep this kind of record for at least several years after receiving the report, as a matter of usual and customary business practice. FDA requests comment on current adverse event recordkeeping practices in the dietary supplement industry, including the length of time such records are typically kept.

According to a 2001 report by the Office of the Inspector General, between 1994–1999 FDA received 2,547 adverse event reports involving dietary supplements, or about 500 reports per year, on average (Ref. 2). According to the report, the actual number of adverse events relating to dietary supplements is likely to be at least 100 times that many, or more than 50,000 adverse events per year. In the absence of data on how many adverse events will be reported each year to the responsible person once the DSNDCPA becomes effective in December 1997, we are using the 50,000 per year figure as an upper bound estimate of reporting. This is almost certainly an overestimate of the number of reports the firms will receive, as it is unlikely that every adverse event that occurs will be reported to the responsible person. FDA requests comments on this estimate.

We estimated in the economic impact analysis of the Dietary Supplement Good Manufacturing Practices final rule (the GMP final rule) (72 FR 34752, June 25, 2007) that there are 1,460 manufacturers, packers, and holders of dietary supplements (72 FR 34752 at 34920). We assume that the estimated 50,000 adverse event reports related to dietary supplements will be spread evenly among these firms. The estimate of the number of manufacturers, packers, and holders of dietary supplements from the GMP final rule is FDA's best estimate of the number of firms that are ''responsible persons'' who must comply with the recordkeeping requirements of the DSNDCPA; however, it is not a precise estimate because the number of dietary supplement establishments covered by the GMP final rule is likely to be larger than the number of ''responsible persons,'' where a ''responsible person'' is a dietary supplement manufacturer, packer, or distributor whose name is listed on the label of a dietary supplement marketed in the United States (see section 761(b)(1) of the act). Thus, FDA's estimate for the number of respondents in table 2 may be overinclusive. FDA requests comments on the number of firms that would be subject to the recordkeeping requirements of the DSNDCPA.

The estimated total annual recordkeeping burden under the statute and this guidance is shown in table 2 of this document.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records [2]	Hours per record	Total hours
Dietary supplement adverse event records (21 U.S.C. 379aa–1(e)(1))	1,460	4.2465	50,000	0.5	25,000
Total					25,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] For purposes of estimating the number of records and hours per record, a ''record'' means all records kept for an individual adverse event report received by the responsible person.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance, including comments regarding proposed collection of information. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. S. 3546 Dietary Supplement and Nonprescription Drug and Consumer Protection Act, Congressional Budget Office Cost Estimate, December 27, 2006.

2. ''Adverse Event Reporting For Dietary Supplements: An Inadequate Safety Valve,'' Office of the Inspector General, Department of Health and Human Services, April 2001, OEI–01–00–00180.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.cfsan.fda.gov/guidance.html*.

Dated: October 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–5074 Filed 10–11–07; 11:34 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0386]

Draft Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application.'' This draft guidance document provides guidance to industry on postmarketing serious adverse event reporting for nonprescription (over-the-counter (OTC)) human drugs marketed without an approved application. It gives guidance on the minimum data elements that should be included in a serious adverse event report, the label that should be included with the report, reporting formats for paper and electronic submissions, and how and where to submit the reports. Separate guidance, issued by the Center for Food Safety and Applied Nutrition on reporting for dietary supplements, is announced elsewhere in this issue of the **Federal Register**.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance, including comments regarding proposed collection of information, by December 14, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance, including comments regarding proposed collection of information, to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD, 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kathleen Frost, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4312, Silver Spring, MD 20993–0002, 301–796–2380.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application.'' Public Law 109–462, the Dietary Supplement and Nonprescription Drug Consumer Protection Act, which was signed by the President on December 22, 2006, states: ''Not later than 270 days after the date of enactment of this Act, the Secretary of Health and Human Services shall issue guidance on the minimum data elements that should be included in a serious adverse event report as described under the amendments made by this Act'' (section 2(e)(3)). Public Law 109–462 also requires certain postmarketing safety reports for dietary supplements.

Public Law 109–462 amends the Federal Food, Drug, and Cosmetic Act (the act) to add safety reporting requirements for nonprescription drug products that are marketed without an approved application. In accordance with section 760(b) of the act (21 U.S.C. 379aa), the manufacturer, packer, or distributor whose name appears on the label of a nonprescription drug marketed in the United States without an approved application (referred to as the responsible person) must submit to FDA any report of a serious adverse event associated with such drug when used in the United States, accompanied by a copy of the label on or within the retail package of such drug. In addition, the responsible person must submit followup reports of new medical information related to a submitted serious adverse event report that is received within 1 year of the initial report (section 760(c)(2) of the act). The guidance document provides information on: (1) The minimum data elements that should be included in a serious adverse event report; (2) the label that should be included with the report; (3) reporting formats for paper and electronic submissions; and (4) how and where to submit the reports.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on postmarketing adverse event reporting for nonprescription human drug products marketed without an approved application. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Postmarketing Adverse Event Reporting and Recordkeeping for Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors whose name (pursuant to section 502(b)(1) of the act) appears on the label of a nonprescription drug marketed in the United States.

Burden Estimate: FDA is requesting public comment on estimates of annual submissions from these respondents, expected in 2008, as required by Public Law 109–462 and described in this guidance. This guidance document discusses what should be included in a serious adverse drug event report submitted under section 760(b)(1) of the act, including follow-up reports under 760(c)(2) of the act, and how to submit these reports. The estimates for annual reporting burden and recordkeeping are based on FDA's knowledge of adverse drug experience reports historically submitted per year for prescription drug products and for nonprescription drug products marketed under an approved application, including knowledge about the time needed to prepare the reports and to maintain records.

FDA receives approximately 2,500 serious adverse event reports for nonprescription drug products marketed under approved applications, which comprise approximately 20 percent of the overall nonprescription drug market. Based on this experience, we estimate between 10,000 and 15,000 (i.e., 12,500) total annual responses for nonprescription drugs marketed without an approved application. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Reports of serious adverse drug events (21 U.S.C. 379aa((b) and (c))	50	250	12,500	2	25,000
Total					25,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 760(e) of the act also requires that responsible persons maintain records of nonprescription adverse event reports, whether or not the event is serious, for a period of 6 years. The draft guidance recommends that responsible persons maintain records of efforts to obtain the minimum data elements for a report of a serious adverse drug event and any followup reports. Although the guidance does not provide recommendations on recordkeeping activities generally under section 760(e) of the act, FDA is providing an estimate for the burden of this collection. Historically, serious adverse event reports comprise approximately two-thirds, and nonserious adverse event reports comprise approximately one-third, of the total number of postmarketing adverse event reports associated with drugs and biologic therapeutics (except vaccines) received by FDA. Based on this generalization, FDA estimates the total annual records to be approximately 20,000 records per year. FDA estimates that it takes 5 hours to maintain each record and the recordkeeping burden as follows:

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
Recordkeeping (21 U.S.C. 379aa(e)(1))	200	100	20,000	5	100,000
Total					100,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Therefore, the estimated annual reporting burden for this information is 25,000 hours, and the estimated annual recordkeeping burden is 100,000 hours.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–5073 Filed 10–11–07; 11:34 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services at 72, Number 188, page 55232, September 28, 2007, is

amended to reflect changes to the structure and functional statements for the Office of Program Services (OPS), Division of Management Systems (DMS). This amendment reflects the deletion of references to the information technology (IT) functions within the functional statement of DMS. In addition, it reflects the establishment of a new Division of Technology Management (DTM), within OPS. These changes will strengthen the management of this key function (IT) and provide better customer service and program coordination. The changes are as follows:

Section M.20, Functions is amended as follows:

The functional statements for the Office of Program Services (OPS), Division of Management Systems (DMS) is replaced, and a new functional statement within OPS is established for the new Division of Technology Management (DTM).

Division of Management Systems (MBC)

(1) Provides leadership in the development of policies for and the analysis, performance measurement, and improvement of SAMHSA administrative and management systems; (2) coordinates with other service providers the provision of human resource management services, equal employment opportunity services, and personnel security services, working with HHS service components and outside organizations as necessary and monitoring their performance; (3) manages the SAMBHSA ethics program; (4) coordinates and serves as a focal point for SAMHSA intern and summer employment programs; (5) provides advisory services to managers and supervisors in such matters as organizational development, analysis, performance, and performance measurement; (6) coordinates General Accounting Office and Office of the Inspector General reviews and information requests, internal control reviews, and Federal Managers Financial Integrity Act responses; (7) plans and coordinates various management activities such as records management, forms management, Privacy Act, and OPS Freedom of Information Act requests; (8) coordinates the Competitive Sourcing program for the agency, including the annual Federal Activities Inventory Reform Act (FAIR Act) Inventory, and activities and studies conducted in accordance in OMB Circular A–76, regarding competition of commercial activities; (9) develops, maintains, and manages administrative management systems regarding policies and procedures.

Division of Technology Management (MBJ)

(1) Provides leadership in the development of policies for and the analysis, performance measurement, and improvement of SAMHSA information systems; (2) Manages, operates, and enhances SAMHSA-wide administrative applications software systems; (3) coordinates with other service providers the provision of IT services, including operation of the local and wide area networks, personal computers, network servers, electronic mail and faxes, and general computer repairs, working with HHS service components and outside organizations as necessary and monitoring their performance; (4) serves as the Agency focal point for IT policy, strategic planning, budget preparation, coordination with the Department regarding these issues, and the submission of required reports to the Department on a timely basis; (5) makes certain that the appropriate level of IT security is in place so that the safety of Agency data can be assured; (6) oversees Agency-wide database administration and systems configuration management, providing advice, assistance, and training to Agency staff to obtain maximum utilization of and services from its information/application systems and databases; (7) exercises clearance authority for Agency IT management projects; and (8) reviews and analyzes new IT management developments and ensures necessary support services are provided.

Delegation of Authority

All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue to be in effect pending further redelegations, providing they are consistent with the reorganization.

These organizational changes are effective: October 9, 2007.

Terry L. Cline,

Administrator.

[FR Doc. 07–5060 Filed 10–12–07; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–566, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–566, Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization; OMB Control No. 1615–0027.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 30, 2007, at 72 FR 41515. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 14, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0027 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment to or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–566. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. This information collection facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by U.S. Citizenship and Immigration Services, and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,800 responses at 15 minutes (.250) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,450 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.* We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: October 10, 2007.

Richard Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–20244 Filed 10–12–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5124–N–14]

Notice of Proposed Information Collection for Public Comment; Resident Opportunities and Supportive Services (ROSS) Program Forms for Applying for Funding

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 14, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for the Resident Opportunities and Supportive Services (ROSS) Program.

OMB Approval Number: 2577–0229.

Form Numbers: HUD–52752, HUD–52753, HUD–52754, HUD–52755, HUD–52767, HUD–52768, HUD–52769.

Description of the need for the information and proposed use: Applicants for ROSS Service Coordinator grant funds submit applications for Service Coordinator positions. The grant program is being changed to provide funding for Service Coordinators only. The application is being streamlined. Applicants describe the needs of their residents and the services and partners available in the community, their past performance in similar programs, their ability to commit match funds, and indicate their expected outputs and outcomes.

Respondents: Public Housing Authorities, Tribes/TDHEs, Not-for-profit institutions, Resident Associations.

Frequency of Submission: On occasion.

Number of respondents:

	Annual responses	Hours per response	Burden hours
ROSS SC	400	7	1500
ROSS FSS	250	6	2800

Total Estimated Burden Hours: 4,300.

Status: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Members of affected public: Public housing agencies, non-profits, resident associations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 650 PHAs, tribes/TDHEs, non-profits, or resident groups apply for funding under ROSS each year. The total burden for application and post-award reporting is 4,300 hours.

Dated: October 4, 2007.

Bessy Kong,

Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing.

[FR Doc. E7–20195 Filed 10–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 14, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: University of Alaska Museum of the North, Fairbanks, AK, PRT–162170.

The applicant requests a permit to import biological samples from spotted linsang (*Prionodon pardicolor*) and Asian elephant (*Elephas maximus*) from the Wildlife Conservation Society, Phnom Penh, Cambodia for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: William G. Meeker, El Paso, TX, PRT–158388.

The applicant requests a permit to import one male and one female captive-hatched Northern aplomado falcon (*Falco femoralis septentrionalis*) from Carlos Manuel Tello Quiroz, Deleg. Alvaro Obregon, Mexico for the purpose of enhancement of the species through captive propagation.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: USGS Alaska Science Center, Anchorage, AK, PRT–067925.

On August 31, 2005 (70 FR 51838), a notice was published regarding the applicant's request for an amendment to the permit. Since that notice, no amended permit was issued. The applicant has updated the permit amendment request to include up to 200 takes per year of northern sea otters (*Enhydra lutris kenyoni*), including takes from the threatened population of the species, a modification to the methods of taking, and authorization to import biological samples from the same species for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Walter T. Coram, Bellaire, TX, PRT–160812.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: September 28, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–20234 Filed 10–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Marine Mammals and Marine Mammals

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
156814	David L. Duncan	72 FR 39830; July 20, 2007	September 5, 2007.
152774	Eric K. Schnelle	72 FR 33242; June 15, 2007	July 26, 2007.
152402	Gary D. Young	72 FR 31090; June 5, 2007	August 23, 2007.
154555	Herbert Rudolf	72 FR 31601; June 7, 2007	September 5, 2007.
154496	Scott A. Huebner	72 FR 33242; June 15, 2007	August 9, 2007.
156806	Donald Thompson	72 FR 37795; July 11, 2007	September 5, 2007.
155649	Elizabeth C. Harris	72 FR 39829; July 20, 2007	September 6, 2007.
690038	U.S. Geological Survey	72 FR 25328; May 4, 2007	August 30, 2007.
071799	Jennifer Miksis-Olds	72 FR 39829; July 20, 2007	August 30, 2007.
156394	Raymond Cuppy	72 FR 37039; July 6, 2007	September 5, 2007.

Dated: September 21, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–20233 Filed 10–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
153572	Gregory L. Pope	72 FR 31601; June 7, 2007	August 9, 2007.
155528	Michael G. West	72 FR 37795; July 11, 2007	September 19, 2007.
156520	Christopher Ring	72 FR 39829; July 20, 2007	September 25, 2007.
157475	Philip E. Carlin	72 FR 39829; July 20, 2007	September 19, 2007.

Dated: September 28, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–20236 Filed 10–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[1018–AT72]

Draft Mosquito and Mosquito-Borne Disease Management Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: We propose to establish policy that refuge managers will follow concerning mosquito and mosquito-borne disease management on units of the National Wildlife Refuge System. The National Wildlife Refuge System Administration Act (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), provides the Refuge System mission. That mission is to ''administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.'' In addition, each refuge ''shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established.'' We cannot fulfill this mission unless we provide consistent direction to refuge managers and manage the Refuge System as a national system. Therefore, we are developing policies to provide refuge managers clear direction and procedures for making determinations regarding wildlife conservation and public uses of the Refuge System and individual refuges. This draft policy describes the process we will follow to determine if and how to manage mosquito populations on lands administered within the Refuge System. We propose to incorporate this policy as part 601, chapter 7 of the Fish and Wildlife Service Manual.

This draft policy states that ''we will allow populations of native mosquito species to function unimpeded unless they cause a human and/or wildlife health threat.'' While we recognize mosquitoes are a natural component of most wetland ecosystems, we also recognize they may represent a threat to human and/or wildlife health. We may allow management of mosquito populations on Refuge System lands when those populations pose a threat to the health and safety of the public or a wildlife population. This draft policy outlines the procedures refuge managers will follow in planning and implementing mosquito and mosquito-borne disease management within the Refuge System.

DATES: Comments must be received by November 29, 2007.

ADDRESSES: You may submit comments on this draft policy by mail to Michael Higgins, Biologist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to 703–358–2248; or by e-mail to *refugesystempolicycomments@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Michael J. Higgins, U.S. Fish & Wildlife Service, National Wildlife Refuge System, 177 Admiral Cochrane Drive, Annapolis, MD 21401, telephone: 410–573–4520, fax: 410–269–0832.

SUPPLEMENTARY INFORMATION: The Improvement Act amends and builds on the Administration Act (16 U.S.C. 668dd–668ee) and provides an organic act for the Refuge System. It states that the Refuge System mission ''is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats for the benefit of present and future generations of Americans.'' It directs us to manage each refuge to fulfill the Refuge System mission as well as the specific purpose(s) for which the refuge was established. The Improvement Act provides compatibility standards for refuge uses and directs the Secretary of the Interior to ''ensure that the biological integrity, diversity, and environmental health of the System are maintained.''

We based this draft policy for mosquito and mosquito-borne disease management within the Refuge System on these directives. Effective mosquito control results in the removal of a high percentage of one or more target species, although usually temporarily. In addition, one or more nontarget species may be adversely affected by mosquito control practices. The altered ecological communities that may result can impact biological integrity and diversity through disruptions in food webs and other ecological functions. Therefore, we must carefully evaluate any actions we propose to take.

This draft policy states that ''we will allow populations of native mosquito species to function unimpeded unless they cause a human and/or wildlife health threat.'' While we recognize mosquitoes are a natural component of most wetland ecosystems, we also recognize they may represent a threat to human and/or wildlife health. We may allow management of mosquito populations on Refuge System lands when those populations pose a threat to the health and safety of the public or a wildlife population. This draft policy outlines the procedures refuge managers will follow in planning and implementing mosquito and mosquito-borne disease management within the Refuge System.

The draft policy relies on using scientific principles to identify and respond to public and wildlife health threats from refuge-based mosquitoes. Health threat categories will be identified based on local conditions and the local history of mosquito-associated health threats. We will use local monitoring data of mosquitoes and disease to determine the current threat level and the corresponding appropriate refuge response. During this process, we will work closely with Federal, State, and/or local public health authorities that have expertise in vector-borne diseases and State fish and wildlife agencies in developing mosquito management plans prior to an outbreak of mosquito-borne disease and in determining when human or wildlife health threats or high risk human health situations exist.

Refuges with current mosquito control or mosquito monitoring programs must prepare a mosquito management plan. In addition, refuges where a State or local public health agency identifies a potential health threat must prepare a mosquito management plan. A potential health threat does not imply a need to manage mosquitoes on a refuge, but it does trigger the planning process for monitoring and potential management. Because not all refuges are located in areas where mosquito management is an issue, the draft policy does not require every refuge to prepare a mosquito management plan. As a result, there may be cases where an outbreak of mosquito-borne disease occurs at or near a refuge that has not developed such a plan. We included a section that describes the procedures we would follow in such high health risk situations.

The draft policy includes procedures to follow to reduce threats from refuge-based mosquitoes. These procedures follow an integrated pest management approach and include nonpesticide actions that may be taken to reduce mosquito production.

The purpose of this policy is to provide refuge managers with a process to follow in planning and implementing mosquito and mosquito-borne disease management. Each refuge manager must consider the refuge establishing purposes as well as local conditions when following these procedures.

Comment Solicitation

We seek public comments on this draft mosquito and mosquito-borne disease policy and will consider comments and any additional information received during the 45-day comment period. You may submit comments on this draft policy by mail to Michael Higgins, Biologist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to 703–358–2154; or by e-mail to *refugesystempolicycomments@fws.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attn: 1018–AT72'' and your full name and return mailing address in your Internet message. If you use only your e-mail address, we will consider your comment to be anonymous and will not consider it in the final rule. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2036. You may hand deliver comments to the address listed above.

Our practice is to make comments, including names and addresses of commenters, available for public review during regular business hours. Individual commenters may request that we withhold their home address from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all comments from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Required Determinations

Regulatory Planning and Review (Executive Order (E.O.) 12866)

In accordance with the criteria in Executive Order 12866, this document is not a significant regulatory action and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

(1) This document would not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A brief assessment to clarify the costs and benefits associated with this proposed policy follows.

Proposed Change

Existing Departmental and refuge policies do not address mosquito management in detail and do not provide standard procedure for determining what measures to take on refuges regarding management of

mosquito and mosquito-borne disease. The draft policy provides a standard process to follow and criteria to consider when making such decisions. The draft policy would provide for consistency in protecting wildlife and habitats and in making provisions for protecting public health from mosquito-borne health threats.

This draft policy would affect refuges that have prevalent mosquito populations. The variation from status quo at a refuge will depend on how different current procedures at that refuge are from the procedures that would be followed under a standardized process. In addition, local conditions vary from year to year, and the responding management actions must also vary. Based upon past implementation of mosquito control, we expect affected refuges to include those located in California, Washington, Oregon, Idaho, Texas, Michigan, South Carolina, Florida, Louisiana, New York, Connecticut, Massachusetts, New Jersey, Delaware, Pennsylvania, Colorado, Utah, and Montana. Approximately 60 refuges would be affected by this draft policy. Currently, approximately 40 refuges implement various mosquito control activities.

Costs Incurred

Any costs related to this rulemaking would be borne by each individual refuge and would generally involve costs associated with planning and developing mosquito management plans. No additional costs are expected to be incurred by State or local agencies beyond their usual monitoring costs. The distribution of information would be mostly limited to refuge personnel discussing with visitors the risks and precautions at visitor centers. We expect informing the public about mosquito populations and any possible health risks to incur minimal costs, if any. Refuge personnel would continue to take measures to manage mosquito populations during their normal activities. These standard measures would include such actions as removing artificial breeding sites. State and local officials would predominantly conduct monitoring and surveillance, which are voluntary activities. About 40 refuges currently issue special use permits for monitoring and surveillance activities. Refuges issue special use permits for activities conducted on the refuge. A permit contains guidelines and/or restrictions that apply to a specific activity. For those refuges that may allow new monitoring or surveillance, each permit would require approximately 8 hours by refuge personnel. Thus, approximately 160 hours would be allocated by refuge personnel to complete the permits (20 refuges × 8 hours). These permit requirements would occur annually, depending on the mosquito population levels. Each contingency plan would be specific to each refuge and would be a one-time cost. Currently, about four to five refuges have already constructed mosquito management plans. We estimate that each plan would require approximately 40 hours by refuge personnel. Accordingly, about 2,200 hours would be allocated to complete the contingency plans by the affected refuges (55 refuges × 40 hours).

Benefits Accrued

(1) This draft policy provides policy and procedures for refuge personnel to follow in making provisions to protect public health from mosquito-related health threats. This draft policy follows the requirements of the Administration Act, as amended, by requiring that activities associated with mosquito management be compatible with refuge purposes. It provides a procedure to follow Systemwide. This will ensure consistency in the process, although the outcome will vary based on refuge purposes and local conditions. We do not expect visitation to refuges to change as a result of this draft policy.

(2) This draft policy will not create inconsistencies with other agencies' actions. This draft policy pertains solely to the management of the Refuge System. In the event that the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the public or any fish or wildlife population, we will work with the appropriate agency to ensure consistency.

(3) This draft policy will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This draft policy does not affect entitlement programs.

(4) This draft policy will not raise novel legal or policy issues. This draft policy provides a procedure for refuge managers to follow in mosquito management throughout the Refuge System.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final regulatory flexibility analysis is not required. The following discussion explains our certification.

SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, it is necessary to consider the relative number of small entities likely to be impacted in the area. Similarly, the relative impact on the revenues of small entities is used in determining whether or not entities incur a ''significant economic impact.'' Small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201).

Because this draft policy is not expected to affect activities in the surrounding area or to incur costs to the public, it would not have a significant effect on small businesses engaged in activities around the impacted refuges. Small governmental jurisdictions and independent nonprofit organizations are not expected to be affected. Therefore, we certify that this document would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No further regulatory flexibility analysis is required. Accordingly, a small entity compliance guide is not required.

The proposed policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no

significant employment or small business effects. This draft policy:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, and/or local government agencies, or geographic regions. This draft policy should have no effect on the costs or prices.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This draft policy does not make major changes to current policy. It simply provides a more consistent process for all refuge managers to follow in managing mosquito populations on refuges. Therefore, this document will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this draft policy applies to management of federally owned refuges, and it does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The draft policy does not have a significant or unique effect on State, local, or tribal governments or the private sector.

Takings (E.O. 12630)

In accordance with E.O. 12630, the draft policy does not have significant takings implications. This draft policy will affect only how refuge managers plan actions to manage mosquitoes and mosquito-borne diseases on refuges.

Federalism Assessment (E.O. 13132)

This draft policy does not have sufficient federalism implications to warrant the preparation of a federalism assessment under E.O. 13132. In preparing this draft policy, we received input from State and local governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the draft policy does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the order. The draft policy will clarify established procedures for managing refuge lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Under E.O. 13211 agencies must prepare statements of energy effects when undertaking certain actions. Because this draft policy only provides procedures for managing mosquitoes and mosquito-borne disease on refuges, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no statement of energy effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we evaluated possible effects on federally recognized Indian tribes and determined that there are no effects. We coordinate management actions on refuges with tribal governments having adjoining or overlapping jurisdiction. This draft policy is consistent with and not less restrictive than tribal reservation rules.

Paperwork Reduction Act

This draft policy does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number 1018–0102). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Endangered Species Act Section 7 Consultation

The Service has determined that this draft policy will not affect listed species or designated critical habitat. Therefore, consultation under section 7 of the Endangered Species Act is not required. The basis for this conclusion is that the draft policy establishes the process for determining when a mosquito and mosquito-borne disease management plan must be completed. The ultimate decision to allow or otherwise implement a particular action is the causative agent with respect to affecting listed species or their critical habitat. We will conduct section 7 consultations when developing comprehensive conservation plans and step-down management plans, including mosquito and mosquito-borne disease management plans, for refuges.

National Environmental Policy Act (NEPA)

We ensure compliance with NEPA (42 U.S.C. 4332(C)) when developing refuge comprehensive conservation plans and step-down management plans, including mosquito and mosquito-borne disease management plans. In accordance with 516 DM 2, appendix 1.10, we have determined that this policy is categorically excluded from the NEPA process because it is limited to policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

U.S. Fish and Wildlife Service

Draft Mosquito and Mosquito-Borne Disease Management Policy (601 FW 7)

U.S. Fish and Wildlife Service

National Wildlife Refuge System

7.1 What is the purpose of this chapter?

This chapter provides policy for refuge managers to help them determine how and when to manage mosquito populations on lands administered within the National Wildlife Refuge System (Refuge System).

7.2 What is the mosquito and mosquito-borne disease management policy?

A. It is Refuge System policy to allow populations of native mosquito species to exist unimpeded unless they pose a specific wildlife and/or human health threat. We recognize that mosquitoes are a natural component of most wetland ecosystems, and that they also may represent a threat to human and wildlife health.

B. When necessary to protect the health and safety of the public or a wildlife population, we allow management of mosquito populations on Refuge System lands using effective means that pose the lowest risk to wildlife and habitats.

C. Before we use any method to manage mosquito populations within the Refuge System, we must determine that it is compatible with the purpose(s) of an individual refuge and the Refuge System mission and complies with all applicable Federal laws. We can make an exception to this policy in the event that the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the

public or any fish or wildlife population.

D. Except during high risk disease situations where we need to take action quickly, we must give full consideration to the integrity of nontarget populations and communities when considering compatible habitat management and pesticide uses for mosquito control. Mosquito control procedures must also be consistent with integrated pest management (IPM) strategies and with existing pest management policies of the Department of the Interior (DOI) and the Fish and Wildlife Service (Service) (517 DM 1 and 30 AM 12). Even during high risk disease situations we require mosquito population monitoring data that indicate intervention is necessary, as well as appropriate pesticide review, although these will be expedited so that any necessary intervention measures will not be delayed (see section 7.17)

E. We allow pesticide treatments for mosquito population control on Refuge System lands only when local, current mosquito population monitoring data have been collected and indicate that refuge-based mosquito populations are contributing to a human or wildlife health threat.

7.3 What is the scope of this policy?

This policy applies to all units of the Refuge System where we have jurisdiction over such actions, whether the Service or an authorized outside agency performs mosquito management.

7.4 What is the authority for this chapter?

The authority for this chapter is the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act) (16 U.S.C. 668dd–668ee). The Administration Act:

A. Provides authority for adopting rules and establishing policies for managing the Refuge System and governing refuge uses.

B. Prohibits uses that are not compatible with the purpose(s) of an individual refuge and the Refuge System mission.

C. Requires that we administer the Refuge System as ''* * * a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.'' The Administration Act defines wildlife as ''any wild member of the animal kingdom.''

D. Directs the Secretary to ''* * * ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.'' The Secretary can also allow or initiate activities on a refuge to protect the health and safety of the public or any fish or wildlife population, not withstanding any other requirements of the Act.

7.5 What other statutes and policies may be relevant to mosquito control and what additional documentation does the Service require to monitor and control mosquitoes within the Refuge System?

A. National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347).

(1) Categorical Exclusions. Under most circumstances, we may categorically exclude monitoring and surveillance activities under existing DOI NEPA procedures for data collection and inventory. (For more information, see 516 DM 2, Appendix 1.6; 516 DM 8.5B(1); and 516 DM 2, Appendix 2 (categorical exclusions).) In addition, some habitat management actions as described in section 7.9B may be categorically excluded. If a proposed refuge mosquito management activity qualifies as a categorical exclusion, refuges should document it in an environmental action statement (EAS). We generally may not categorically exclude intervention measures such as pesticide applications for mosquito-borne health threats.

(2) Environmental Assessments. Refuges that have completed the NEPA process for mosquito management should ensure that they addressed the environmental consequences of potential intervention measures. Refuges that have not completed the NEPA process for mosquito management should prepare an environmental assessment (EA) if they expect they might need to implement intervention measures, such as applying pesticides. You may reasonably expect that intervention measures are likely if the State or local public health agency has documented a potential health threat from refuge-based mosquitoes (see section 7.13 for information about determining health threats).

(a) In a non-emergency situation, when a State/local public health agency documents a potential threat, you must complete an EA with the appropriate finding before conducting substantial intervention activities.

(b) You must consider local conditions in an EA. When assessing the potential environmental effects of pesticide applications, consider such factors as the:

(i) Spatial and temporal extent of the treatment,

(ii) Toxicity and specificity of the proposed pesticide(s) to fish and wildlife populations,

(iii) Persistence of the proposed pesticide(s), and the

(iv) Alternatives to the proposed action (e.g., different pesticides, using larvicides versus adulticides, compatible habitat management).

(c) To minimize potential impacts, identify and document restricted areas and activities in an EA. If a finding of no significant impact (FONSI) cannot be made, prepare an environmental impact statement (EIS).

(3) NEPA in Emergency Situations. In a situation where there is a high risk for mosquito-borne disease, you may need to take immediate intervention measures without completing a NEPA review. If you cannot categorically exclude the necessary measures, contact the Regional NEPA coordinator for guidance. After the high risk disease situation has ended, you must complete proper NEPA documentation that addresses future mosquito management activities on the refuge.

B. Endangered Species Act (16 U.S.C. 1531–1544). Comply with section 7 for listed and candidate species (refer to the Endangered Species Consultation Handbook, U.S. Fish and Wildlife Service and National Marine Fisheries Service, 1998). Complete section 7 compliance in conjunction with the refuge-specific mosquito management plan (Exhibit 1).

You must submit consultation documents at least 135 days prior to beginning proposed mosquito management activities. The DOI pesticide use policy (517 DM 1) and the Service pest management policy (30 AM 12) do not allow for adverse impacts to listed species from pesticides. If the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the public or any fish or wildlife population before completing Endangered Species Act section 7 compliance, contact the local ES office for recommendations.

C. Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). On Refuge System lands, we may only use pesticides that are registered with the Environmental Protection Agency. We must apply them according to the pesticide label directions.

D. Compatibility Determination (50 CFR 26.41 and 603 FW 2). We must complete a compatibility determination before we allow an outside agency to perform surveillance and intervention activities unless the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity

in a refuge to protect the health and safety of the public or any fish or wildlife population. See 603 FW 2 for more information on compatibility.

E. Pest Management and Pesticide Use Policies (516 DM 1 and 30 AM 12). Follow all DOI and Service pest management and pesticide use policies. Before applying any pesticide to Refuge System lands, the appropriate Regional or National IPM coordinator must review and approve the pesticide use proposal (PUP). The National IPM coordinator must approve the use of all adulticides. We may expedite PUP approvals during high risk disease situations where we need to take action quickly to protect human or wildlife health. If an outside agency applies pesticides, as is often the case, we require a special use permit (SUP), memorandum of understanding, or other agreement. The agreement must include the justification for pesticide applications, identify the specific areas to be treated, and list any restrictions or conditions that they must follow before, during, or after treatment. Preparation of SUPs, PUPs, and other compliance documentation will be expedited during high risk disease situations so that any necessary intervention measures will not be delayed (see section 7.17)

7.6 What are the principles underlying this policy?

A. Wildlife Conservation.

(1) The Administration Act clearly identifies wildlife conservation as a priority of the Refuge System. House Report 105–106, which accompanies the amendments to the Administration Act, states that ''* * * the fundamental mission of our Refuge System is wildlife conservation: Wildlife and wildlife conservation must come first.'' The term ''wildlife'' includes all vertebrate and invertebrate species.

(2) In addition to undertaking the task of wildlife conservation, Refuge System managers must also consider impacts to federally listed threatened and endangered species and candidate species. This is particularly important to refuges established specifically for listed species conservation and recovery. To help determine these impacts, refuge managers can coordinate with local Ecological Services field office staff (both endangered species and environmental contaminants staff), other members of the species recovery team, and the respective State fish and wildlife agencies.

(3) Both the Service and the State fish and wildlife agencies have authorities and responsibilities for managing fish and wildlife on national wildlife refuges as described in 43 CFR part 24. Consistent with the Administration Act, as amended, the Director interacts, coordinates, cooperates, and collaborates with the State fish and wildlife agencies in a timely and effective manner on the acquisition and management of national wildlife refuges. The Director ensures that Refuge System regulations and management plans are, to the extent practicable, consistent with State laws, regulations, and management plans. We charge refuge managers, as the designated representatives of the Director at the local level, with carrying out these directives. We will provide State fish and wildlife agencies timely and meaningful opportunities to participate in the development and implementation of programs conducted under this policy. The most common method for State fish and wildlife agency involvement is through their participation on the comprehensive conservation plan (CCP) planning teams. We provide an opportunity for the State fish and wildlife agencies to participate in the development and implementation of program changes made outside of the CCP process, including development of mosquito management plans. For health threats involving wildlife, we will consult with the State fish and wildlife agency. Further, we will continue to provide State fish and wildlife agencies opportunities to discuss and, if necessary, elevate decisions within the hierarchy of the Service.

B. Protection of Public Health. Although the fundamental goal of the Refuge System is wildlife conservation, we are committed to protecting the public from refuge-based mosquitoes that present a threat to human health. We manage such health threats using methods that we determine are compatible with the purpose(s) of the refuge and the mission of the Refuge System. We may make exceptions to this policy in the event that, under the emergency provision of the Administration Act, the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the public or any fish or wildlife population. We recognize that equines may also become infected by certain mosquito-borne diseases. Given that infection by mosquito-borne pathogens in equines and humans represent similar risks to public health, appropriate measures we take to protect human health from these diseases would also offer similar protection to equines.

C. Mosquito Management and the Protection of Biological Integrity, Diversity, and Environmental Health. We manage mosquitoes in such a way as to meet our statutory obligations to protect the biological integrity of refuges while meeting our policy obligations and our social obligation to protect the health and well-being of the human communities surrounding refuges. Mosquito management strategies and the altered ecological communities that may result can potentially impact the biological integrity, diversity, and environmental health of refuge lands that we must maintain under the Administration Act and 601 FW 3.

(1) Using chemical or other control agents can affect environmental health and possibly impact genetic configuration within species if they develop pesticide resistance.

(2) Removing target and nontarget organisms from ecological communities lowers biological diversity (even though it is usually temporarily) and may impact biological integrity by altering food webs and species composition.

7.7 What terms do you need to know to understand this chapter?

A. Action Threshold. Mosquito population levels that trigger integrated pest management (IPM) actions to manipulate mosquito populations.

B. Adulticide. Killing adult mosquitoes or a pesticide that kills adult mosquitoes.

C. Biological Diversity. The variety of life and its processes, including the variety of living organisms, the genetic differences among them, and communities and ecosystems in which they occur. (See 601 FW 3 for more information on biological diversity.)

D. Biological Integrity. Biotic composition, structure, and functioning at genetic, organism, and community levels comparable with historic conditions, including the natural biological processes that shape genomes, organisms, and communities. (See 601 FW 3 for more information on biological integrity.)

E. Environmental Health. Composition, structure, and functioning of soil, water, air, and other abiotic features comparable with historic conditions, including the natural abiotic processes that shape the environment. (See 601 FW 3.)

F. Enzootic. A relatively consistent prevalence of disease in animals. The term is comparable to endemic, but refers to animals.

G. Health Threat. An adverse impact to the health of human or wildlife populations from mosquitoes identified and documented by Federal, State, and/or local public health authorities.

H. Integrated Pest Management (IPM). A sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

I. Larvicide. Killing mosquito larvae, or a pesticide that kills mosquito larvae.

J. Mosquito-Borne Disease. An illness produced by a pathogen that mosquitoes transmit to humans and other vertebrates. The major mosquito-borne pathogens presently known to occur in the United States that are capable of producing human illness are the viruses causing eastern equine encephalitis, western equine encephalitis, St. Louis encephalitis, West Nile encephalitis/fever, LaCrosse encephalitis, and dengue, as well as the protozoans causing malaria.

K. Mosquito-Borne Disease Surveillance. Activities associated with detecting pathogens causing mosquito-borne diseases, such as testing adult mosquitoes for pathogens or testing reservoir hosts for pathogens or antibodies.

L. Mosquito Management. Any activity designed to inhibit or reduce populations of flies in the family Culicidae. It includes physical, biological, cultural, and chemical means of population control directed against any life stage of mosquitoes.

M. Mosquito Population Monitoring. Activities associated with collecting quantitative data to determine mosquito species composition and to estimate relative changes in mosquito population sizes over time.

N. Nontarget Organisms. Species or communities other than those designated for population control.

O. Public Health Authority. A Federal, State, and/or local agency that has health experts with training and expertise in mosquitoes and mosquito-borne diseases and that has the official capacity to identify health threats and determine when there is a high risk for serious human disease or death from mosquitoes.

P. Pupacide. A pesticide that kills the pupal stage of mosquitoes.

Q. Refuge-Based Mosquitoes. Mosquitoes that are produced within, or occur on, a refuge.

R. Reservoir Host. A species in which a pathogen is maintained over time. Reservoir hosts are capable of transferring the pathogen to a vector.

S. Vector. An organism, such as an insect or tick, that is capable of acquiring and transmitting a disease-causing agent, or pathogen, from one vertebrate host to another, or the act of transmitting a pathogen in such a manner.

7.8 How does the Service protect human and/or wildlife health from threats associated with refuge-based mosquitoes?

We take the following approaches, each of which we describe in more detail in sections 7.9 through 7.17.

A. Use of standard operating procedures based on an IPM approach (see section 7.9).

B. Development of mosquito management plans (see sections 7.10 and 7.11).

C. Determining health threats (see section 7.12).

D. Monitoring to determine appropriate response (see section 7.13).

E. Surveillance for mosquito-borne disease (see section 7.14).

F. Implementing treatment options (see section 7.15).

G. Education and outreach (see section 7.16).

H. High disease risk situations (see section 7.17).

7.9 What standard operating procedures are in place to reduce threats to human and wildlife health from mosquitoes?

When necessary to protect human and wildlife health, we reduce potential mosquito-associated health threats using an IPM approach. When practical, the approach may include compatible actions that reduce mosquito production and do not involve pesticides. We consider the procedures described below as long-term practices to reduce persistent potential mosquito-associated health threats that Federal, State, and/or local public health authorities have identified. Except in cases where the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the public or any fish or wildlife population, where there is a need to take action immediately, any procedures we use to reduce mosquito production must be compatible with refuge purposes and the Refuge System mission. The procedures also must give full consideration to the safety and integrity of nontarget organisms and communities, including federally listed threatened and endangered species and candidate species.

A. We remove or otherwise manage artificial breeding sites such as tires, tanks, or similar debris/containers, where possible, to eliminate conditions that favor mosquito breeding, regardless of whether they are a health threat.

B. When enhancing, restoring, or managing habitat for wildlife, we will consider using specific actions to reduce mosquito populations that do not interfere with refuge purposes or wildlife management objectives. For example, when manipulating water levels for managing wetlands, you can disrupt mosquito life cycles by timing flood-up and draw-downs. You also can manage vegetation in such a way that discourages mosquitoes from laying eggs.

C. Except when we determine it is appropriate during circumstances where the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the public or any fish or wildlife population, we prohibit habitat manipulations for mosquito management (such as draining or maintaining high water levels inappropriate for other wildlife) that conflict with wildlife management objectives.

D. We will consider introducing predators to manage mosquitoes only if we can contain such introductions. To introduce predators, we require the following:

(1) We must be able to demonstrate effectiveness of the planned introduction.

(2) The refuge must evaluate the introduction for potential adverse impacts to nontarget organisms and communities to ensure the introduction will not interfere with the purpose(s) of the refuge or other refuge management objectives.

(3) We must have appropriate procedures in place for all species introductions to ensure that we do not release other species with the desired introductions.

(4) For introductions of nonnative predators, the refuge must prepare:

(a) A compatibility determination,

(b) A written plan for containment of the introduced species to the desired location(s), and

(c) The appropriate level of compliance with section 7 of the Endangered Species Act evaluating potential effects of the introduced predator on federally listed threatened or endangered species and candidate species.

(d) The appropriate level of NEPA compliance.

(5) In compliance with Executive Order 13112, we will not authorize any activities likely to cause or promote the introduction or spread of invasive species. (See 601 FW 3.)

7.10 When does the Service develop mosquito management plans to help reduce threats to human and wildlife health from mosquitoes?

We develop refuge-specific mosquito management plans (see Exhibit 1) at the field station level for refuges where potential or existing mosquito-associated health threats have been identified and documented, or are reasonably expected to occur. We develop these plans in coordination with Federal, State, and/or local public health authorities that have expertise in vector-borne diseases, vector control agencies, and State fish and wildlife agencies.

A. The refuge may need to develop a plan if there has been documentation of mosquito-borne disease activity within flight range of refuge-based mosquito species in the previous year.

B. Refuges with an ongoing mosquito or disease monitoring program must develop refuge-specific mosquito management plans.

C. Identification and documentation of a potential human and/or wildlife health threat from refuge-based mosquitoes (see section 7.11) triggers the development of a refuge-specific mosquito management plan. Federal, State, and/or local public health authorities identify and document a mosquito-associated human health threat and bring it to the attention of the refuge manager. Appropriate documentation may include species-specific adult mosquito monitoring data from the refuge or areas adjacent to the refuge that indicate an abundance of species known to vector one or more endemic/enzootic diseases or otherwise adversely impact human or wildlife health. For refuges without an ongoing mosquito or disease monitoring program, mosquito-borne disease activity near the refuge may indicate a health threat or a situation in which mosquito management needs to be undertaken quickly (refer to section 7.17). The identification and documentation of a potential mosquito-associated health threat will not necessarily imply a need for us to manage mosquito populations, but may indicate the need to initiate on-refuge monitoring (if not already underway) and mosquito management planning.

D. We work collaboratively with Federal, State and/or local public health authorities in the identification of mosquito-associated health threats. However, the Secretary maintains the authority to act independently as necessary to protect the health and safety of the public or any fish or wildlife population.

E. Mosquito-borne disease and vector management may not be an issue on many Service lands, and not every refuge needs to develop a plan.

F. In the event that the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the public or any fish or wildlife population, when there is a need to take action immediately, we allow refuges to manage mosquito populations even if they do not have a mosquito management plan (see section 7.17 for additional guidance).

7.11 What is in a mosquito management plan?

We base mosquito management plans on IPM principles. The Regional IPM coordinator reviews them, and the Regional and California/Nevada Operations Office (CNO) Refuge chief approves or disapproves them. Mosquito management plans consist of four parts: Health threat determinations, mosquito population monitoring, surveillance for mosquito-borne disease, and treatment options. See Exhibit 2 for details.

7.12 How does the Service make determinations about health threats caused by mosquitoes?

A. We determine if there are health threats at the local level based on historical incidence of mosquito-borne health threats and current, local monitoring of mosquito populations and disease activity. (See section 7.13 for more information on monitoring.) We work with local, State, or Federal public health authorities with expertise in mosquitoes and mosquito-borne disease epidemiology to identify refuge-specific categories of mosquito-associated human health threats based on monitoring data. Where local or State public health expertise in mosquito-borne disease epidemiology is lacking, we consult with the Department of Health and Human Services Centers for Disease Control and Prevention (CDC) to develop these categories.

B. Federal, State, and/or local public health authorities with jurisdiction inclusive of refuge boundaries determine the human health threat level using current local monitoring data (see section 7.13C). Wildlife health experts from Federal or State wildlife agencies determine if there are threats to wildlife health because of mosquitoes.

C. Once we identify a health threat through monitoring data, State/local public health authorities or vector control agencies may take the pre-determined response(s) developed for that threat category (see Exhibit 2). We also respond appropriately when neighboring State/local public health authorities determine there is a health threat.

D. Following guidelines established by the CDC, threat categories will represent a hierarchical scale of increasing risk to human or wildlife health based on disease activity and mosquito vector population numbers, and will include appropriate actions to take for each threat level category. Such a locally developed health threat matrix will provide the basis for all future mosquito management decisions and activities on a refuge, so threat level categories and responses should be as specifically defined as practical.

E. If we cannot agree with other agencies on the determination of health threats, threshold values, or other components of the mosquito management plan, we will work with the public health and vector control agencies to identify third-party agencies or individuals with appropriate expertise in mosquito biology and vector-borne disease ecology for further guidance.

7.13 How does the Service monitor mosquito populations to determine if a response is necessary and, if so, what the appropriate response is?

A. The objectives of mosquito population monitoring are to:

(1) Establish baseline data on species and abundance,

(2) Map breeding and/or harboring habitats, and

(3) Estimate relative changes in population sizes for making IPM decisions to reduce mosquito populations when necessary.

B. We use an approach based on specific health threats and refuge mosquito population monitoring data to determine the appropriate refuge mosquito management response (see Exhibit 2).

(1) Monitoring should occur at any time mosquitoes are active, even when there is no evidence of mosquito-borne disease present.

(2) Monitoring protocols specify detailed sampling techniques for larval and adult mosquitoes. When possible, identify mosquitoes to the species level.

C. Human and wildlife health threats from mosquitoes may vary depending on geographic area and time, and we must determine the threat at the local level. State/local public health authorities and vector control agencies will be responsible for monitoring mosquito populations, conducting disease surveillance, and applying pesticide treatments. We recognize the importance of monitoring mosquito

populations to document species composition and estimate their size and distribution because we use this information to make IPM decisions. We allow State/local public health authorities and vector control agencies to monitor mosquito populations on Refuge System lands as long as monitoring is compatible with the purpose(s) of the refuge.

D. Refuges can issue an SUP, memorandum of understanding, or other agreement to allow compatible monitoring of larval and adult mosquito populations. To avoid harm to wildlife or habitats, access to traps and sampling stations must meet the compatibility requirements found in 603 FW 2 and may be subject to refuge-specific restrictions. Where federally listed or candidate species are present, monitoring methods must undergo the appropriate level of compliance with section 7 of the Endangered Species Act in order to determine whether or not such monitoring programs will adversely affect the listed or candidate species.

E. We expect the extent and intensity of a monitoring program to vary according to the potential and historical incidence of mosquito-associated health threats, as well as the resources available to the refuge and the public health authority or vector control district.

F. If a public health authority or vector control agency is not available to conduct monitoring, the mosquito management plan will identify the conditions under which refuge staff will initiate emergency monitoring. Refuges that want to monitor mosquito populations themselves may do so. They should outline their activities in the refuge-specific contingency plan (see Exhibit 1), and include mosquito monitoring protocols in the refuge inventory and monitoring plan. (See 701 FW 2 for more information about inventorying and monitoring populations.)

7.14 How does the Service use surveillance for mosquito-borne disease to reduce threats to human and wildlife health from mosquitoes?

We allow Federal, State, and/or local public health authorities or vector control agencies to perform compatible mosquito-borne disease surveillance on Refuge System lands.

A. The objectives of mosquito-borne disease surveillance are to:

(1) Detect the presence of pathogens,

(2) Estimate changes in disease or pathogenic activity, and

(3) Assess human and wildlife health threats due to mosquitoes.

B. Federal, State, and/or local public health and wildlife management authorities may use appropriate documentation of previous or current mosquito-borne disease activity adjacent to the refuge to identify potential or existing health threats.

C. Disease surveillance adjacent to the refuge should be within flight range of vector species found on the refuge.

D. State and local public health authorities or vector control agencies are generally responsible for other disease surveillance methods, such as monitoring disease activity in reservoir hosts for pathogens or antibodies, collecting adult mosquito samples using live traps, and testing the samples in same-species pools for virus.

(1) On Refuge System lands, we may authorize these activities, and they must meet the compatibility requirements in 603 FW 2.

(2) Approved, compatible surveillance activities on the refuge will include specific, detailed methodologies and the number and location of detection stations.

(3) Where federally listed or candidate species are present, surveillance methods must undergo the appropriate level of compliance with section 7 of the Endangered Species Act in order to determine whether or not such monitoring programs will adversely affect the listed or candidate species.

(4) Surveillance for mosquito-borne disease may involve monitoring and testing wildlife, especially birds and mosquitoes, and testing captive sentinel birds on or adjacent to the refuge. We discourage using caged sentinel chickens on refuges for reservoir host surveillance due to the risk of spreading disease to wild birds.

E. Refuge employees note dead or sick wildlife during their routine outdoor activities. In most cases, this will only involve passive surveillance for affected wildlife.

(1) Refuges identify a facility to test dead or sick wildlife for mosquito-borne pathogens in mosquito management plans (also see Exhibit 1).

(2) Refuge personnel receive instruction on proper procedures for safely collecting, handling, shipping, or disposing of potentially infected wildlife.

(3) If wildlife specimens from a refuge test positive for mosquito-borne disease, we provide these results to the State and local public health authorities, State fish and wildlife agencies, and the refuge supervisor immediately.

7.15 How does the Service determine what treatment options to use for mosquitoes?

A. We establish numerical action thresholds in collaboration with Federal, State, and/or local public health authorities and vector control agencies and identify them in the mosquito management plan (see Exhibit 2).

(1) The action thresholds represent mosquito population levels that may require intervention measures.

(2) We develop thresholds considering many factors, including those listed in Exhibit 3.

(3) Thresholds are species-specific (or species-group-specific) for larval, pupal, and adult mosquito vectors and reflect the potential significance of a particular species or group of species in a particular health threat. For example, mosquito vector species known to be important in the transmission cycle of a disease may have a lower action threshold than species with lesser transmission roles (see Exhibit 3).

(4) We compare current mosquito population monitoring data to the established action thresholds.

(5) We implement intervention measures only when current mosquito population estimates, as determined by current mosquito monitoring data, meet or exceed the established action thresholds.

B. We choose treatment based on our pest management policy (30 AM 12). We base the choice on the following, which appear in order of preference:

(1) Human safety and environmental integrity,

(2) Effectiveness, and

(3) Cost.

C. We use human and wildlife mosquito-associated health threat determinations combined with refuge mosquito population estimates to determine the appropriate refuge mosquito management response (see Exhibit 2).

D. Where federally listed or candidate species are present, we use Endangered Species Act section 7 compliance information to assist in the decision-making process.

E. After we evaluate all other reasonable IPM actions, we may allow pesticide treatments to control mosquitoes on Refuge System lands.

(1) Before applying pesticides to Refuge System lands, we must have an approved PUP in place.

(2) We determine the most appropriate pesticide treatment options based on monitoring data for the relevant mosquito life stage. We use current monitoring data for larval,

pupal, and adult mosquitoes to determine the need for larvicides, pupacides, and adulticides, respectively.

(3) We do not allow pesticide treatments for mosquito control on Refuge System lands without current mosquito population data indicating that such actions are warranted.

F. The mosquito management plan also identifies more aggressive monitoring and control efforts as health threat risk levels increase (see Exhibit 2). If we determine pesticide treatments are necessary to quickly reduce mosquito populations, we may allow appropriate pesticides based on the nature of the threat.

(1) Larvicides. When we can reduce health threats by using pesticides that kill mosquito larvae (larvicides), we choose an effective larvicide that causes the least impact to nontarget organisms.

(2) Pupacides. We limit the need for pupacides by treating threatening larval populations in a timely manner. We consider using pupacides only when there is a documented health threat. We select an effective pupacide that causes the least impact to nontarget organisms.

(3) Adulticides. We allow the use of adulticides only when there are no practical and effective alternatives to reduce a health threat. The mosquito management plan will identify best management practices to reduce nontarget impacts in cases where we use adulticide treatment.

G. We work with public health and vector control agencies to develop communication procedures, particularly to address high risk disease situations. Timely communication at the outset of a disease outbreak will speed any necessary response. We share contact information with other agencies. Refuge employees have the necessary contact information for appropriate Service personnel to expedite any necessary compliance documentation (see section 7.17).

7.16 How does the Service use education and outreach to protect human and wildlife health from threats from mosquitoes?

A. Where appropriate, we collaborate with Federal, State, and/or local wildlife agencies, public health authorities, agriculture departments, and vector control agencies to conduct education and outreach activities aimed at protecting human and wildlife health from threats associated with mosquitoes.

B. Where appropriate, we distribute information materials about mosquito-associated threats through refuge visitor centers and Service Internet sites.

C. Refuge employees receive instruction on personal protection measures to minimize their exposure to mosquito-borne diseases.

7.17 How does the Service address high risk mosquito-borne disease situations on refuges?

Federal, State, and/or local public health authorities may officially identify a high risk for mosquito-borne disease based on documented disease activity in humans or wildlife. In addition, the Secretary has the authority to identify a high risk for mosquito-borne disease independent of Federal, State, and/or local public health authorities. Such a high risk determination indicates an imminent risk of serious human disease or death, or an imminent risk to populations of wildlife. Public health authorities may request pesticide treatments to Refuge System lands to decrease mosquito vector populations and lower the health risk. Refuges with approved mosquito management plans will have addressed potential high risk situations and appropriate responses within those documents. Refuges without approved mosquito management plans should contact their refuge supervisor and Regional IPM coordinator in the event of a high risk determination. Even during high disease risk situations, we allow pesticide treatments for mosquito population control on Refuge System lands only when local and current mosquito population monitoring data are available and indicate that refuge-based mosquito populations are contributing to a human and/or wildlife health threat. Collecting such monitoring data is standard for making IPM decisions and should not delay appropriate treatment. For a high risk mosquito-borne disease determination, appropriate documentation includes identification of infected mosquitoes or abundant populations of vector species within refuge boundaries. In high risk mosquito-borne disease situations, we will do the following:

A. If no mosquito population data are available for the refuge, we will request (or undertake, if applicable) short-term (24 hours or less) monitoring of adult and/or larval mosquito populations on the refuge to ensure that intervention is necessary.

B. If necessary, we monitor the populations ourselves. We cannot use a pesticide unless we have current mosquito population monitoring data indicating intervention with pesticides is warranted. We will complete and submit a PUP to the Regional IPM coordinator and Washington Office IPM coordinator, if applicable, for expedited review. In a high risk disease situation we may not wait for monitoring results to initiate the PUP process, and we will expedite the review of PUPs.

C. If there is no site-specific National Environmental Policy Act (NEPA) documentation for the proposed emergency intervention measure(s), contact the Regional NEPA coordinator for guidance (refer to section 7.5).

D. If federally listed or candidate species are present and Endangered Species Act section 7 compliance has not been completed for the potential intervention measures, contact the local Ecological Services (ES) office for recommendations (refer to section 7.17).

E. Notify refuge employees and visitors of the increased human health risk and provide information for personal protection against mosquito-borne disease. Where appropriate, we will consider restricting or closing all or part of the refuge to visitors and restricting outdoor activities of employees.

F. If monitoring data indicate that intervention with pesticides is warranted, we will prepare an SUP for pesticide application(s). In the SUP, we may identify pertinent conditions and restrictions on pesticide application activities to protect sensitive species or habitats. Although we may waive the requirement for a compatibility determination in a high disease risk situation, we will choose effective means to lower the health threat that pose the least risk to wildlife and habitats.

G. Preparation of SUPs, PUPs, and other compliance documentation will be expedited so that any necessary intervention measures will not be delayed.

H. After pesticide applications, we require (or undertake, if applicable) additional mosquito population monitoring to assess the effectiveness of the pesticide treatment(s).

I. See Section 7.5A.(3) for NEPA procedures in emergency situations.

J. Once a high risk mosquito-borne diseases situation is over, an affected refuge must develop a mosquito management plan and prepare all necessary compliance documents (see sections 7.5, 7.10, and 7.11).

Dated: September 21, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

601 FW 7, Exhibit 1

Outline: Mosquito Management Plan for Mosquito Associated Threats on Refuges

I. Health Threat Determination

A. Describe the communication process and identify points of contact and their contact information for Federal and/or State/local public health authorities, vector control agencies, and recognized experts in vector ecology, epidemiology, public health, and wildlife health. Identify agency with public human health authority that has the official capacity to make a human health determination. Identify personnel with medical training on the epidemiology of mosquito-borne diseases.

B. Elaborate on regional/local history of mosquito associated health threat(s). Identify endemic and enzootic mosquito-borne diseases.

C. Determine health threat(s) using criteria in Exhibit 2 based on documentation from Service wildlife health experts, State fish and wildlife agency health experts, Federal and/or State/local public health authorities, and/or public health veterinarians employed by the appropriate public health authorities that refuge-based mosquitoes threaten human or wildlife health.

1. Off-refuge (or on-refuge, if available) mosquito surveillance summary data (species and abundance).

2. List of vector species present and enzootic/endemic diseases they may vector.

II. Monitoring Mosquito Populations (Developed in Cooperation With Federal/State/Local Public Health Authorities, Vector Control Agencies, and State Fish and Wildlife Agencies)

A. Identify the purpose and goals of monitoring on the refuge.

B. Identify who will conduct monitoring on the refuge and their contact information.

C. Identify when they will conduct the monitoring:

1. Routine, seasonal; or

2. Monitoring only when threat level is elevated (identify triggers for monitoring).

D. Description of monitoring protocols.

1. Larval and pupal mosquito monitoring and breeding habitat inventory and mapping.

(a) Objective(s).

(b) Method(s).

(c) Sampling locations and numbers of samples/location.

(d) Frequency of sampling.

(e) Processing/identification of samples (species, larval stage).

2. Adult mosquito monitoring.

(a) Method(s) of sampling (e.g., traps, landing counts).

(b) Sampling locations and frequency of sampling.

(c) Processing/identification of samples.

3. Post-treatment monitoring: Monitoring should continue after any treatment to determine efficacy.

E. Reporting.

1. Refuge receives copies of all monitoring data concerning refuge.

2. Refuge shares annual habitat management plans, if applicable, with public health or vector control agency.

F. Restrictions/Stipulations: Identify any restrictions/stipulations on monitoring activities (e.g., access, vehicle use, sensitive species or habitats, time of day, etc.) to ensure compatibility.

III. Surveillance of Mosquito-Borne Disease (Developed in Cooperation With Federal/State/Local Public Health Authorities, Vector Control Agencies, and State Fish and Wildlife Agencies)

A. Identify the purpose and goals of surveillance.

B. Identify who will be conducting surveillance on or near the refuge and their contact information.

C. Identify when they will conduct surveillance.

1. Routine, seasonal surveillance; or

2. Surveillance only when threat level is elevated (identify triggers for surveillance).

D. Description of surveillance protocols.

1. Disease monitoring.

(a) Objective(s).

(b) Method(s).

(c) Monitoring locations.

(d) Wildlife testing facility (for dead or sick wildlife found on the refuge).

2. Disease activity notification procedures between public health agency, State fish and wildlife agency, and refuge (we develop these procedures cooperatively).

3. Post-treatment monitoring: Surveillance should continue after any treatment to determine effectiveness.

E. Restrictions/Stipulations: Identify any restrictions/stipulations on surveillance activities (e.g., access, vehicle use, sensitive species or habitats, time of day, etc.).

IV. Treatment Options (Developed in Cooperation With Federal/State/Local Public Health Authorities, and Vector Control Agencies, and State Fish And Wildlife Agencies Using Stepwise Approach, Exhibit 2)

A. Identify and categorize refuge-based vector species or species groups based on role in transmission cycle(s) of enzootic/endemic diseases.

B. Identify species-specific larval, pupal, and adult mosquito vector action threshold levels that reflect the importance of vector species in the transmission cycle (see Exhibit 3).

C. Identify health threat levels and describe potential intervention measures for each level (Exhibit 2). Include non-pesticide and pesticide intervention options.

D. Complete NEPA process, as necessary, to examine potential environmental effects of potential intervention measures. In an emergency, contact the Regional NEPA coordinator for guidance.

E. Complete Endangered Species Act section 7 compliance for potential impacts to listed and candidate species from intervention measures.

F. Identify specific pesticides or other management actions to use at specific threat levels based on NEPA and section 7 analyses.

G. Unless the Secretary determines it is necessary to temporarily suspend, allow, or initiate any activity in a refuge to protect the health and safety of the public or any fish or wildlife population, complete a compatibility determination for intervention measures. Refer to 603 FW 2 for more information about compatibility and emergencies.

H. Follow Service pesticide use and permitting procedures, and attach approved pesticide use proposal (PUP) and special use permits (SUP).

1. Complete PUP.

2. Submit PUP to Regional IPM coordinator. In an emergency, contact Regional/CNO pest management coordinator (and national IPM coordinator, if adulticides are involved) to expedite PUP approval.

3. Prepare SUP or other agreement for agency conducting intervention measures, outlining specific actions to be taken (when, where, how) and describing any restrictions, stipulations, or other conditions on such actions.

601 FW 7, Exhibit 2

Example of Mosquito-Borne Disease Health Threat and Response Matrix

Current conditions		Threat level	Refuge response
Health threat category [1]	Refuge mosquito populations [2]		
No documented existing or historical health threat.	No action threshold	1	Remove/manage artificial mosquito breeding sites such as tires, tanks, or similar debris/containers.
Documented historical health threat.	Below action threshold	2	Response as in threat level 1, plus: Allow compatible monitoring and disease surveillance. Consider compatible nonpesticide management options to reduce mosquito production (section 7.9).
	Above action threshold	3	Response as in threat level 2, plus: Allow compatible site-specific application of larvicide in infested areas as determined by monitoring.
Documented existing health threat (specify multiple levels, if necessary; e.g., disease found in wildlife, disease found in mosquitoes, etc.).	Below action threshold	4	Response as in threat level 2, plus: Increase monitoring and disease surveillance.
	Above action threshold	5	Response as in threat levels 3 and 4, plus: Allow compatible site-specific application of larvicide, pupacide, or adulticide in infested areas as determined by monitoring data (refer to section 7.15).
High risk for mosquito-borne disease (imminent risk of serious human disease or death, or an imminent risk to populations of wildlife).	Below action threshold	6	Maximize monitoring and disease surveillance (refer to section 7.15).
	Above action threshold	7	Response as in threat level 6, plus: Allow site-specific application of larvicide, pupacide, and adulticide in infested areas as determined by monitoring (refer to sections 7.15 and 7.17).

[1] Health threat/risk as determined by Federal and/or State/local public health or wildlife management authorities with jurisdiction inclusive of refuge boundaries and/or neighboring public health authorities.

[2] Action thresholds represent mosquito population levels that may require intervention measures. We develop thresholds in collaboration with Federal and/or State/local public health or wildlife management authorities and vector control agencies. They must be species- and life stage-specific.

601 FW 7, Exhibit 3

Factors To Consider When Establishing Thresholds for Use of Larvicides/ Pupacides/Adulticides To Control Mosquitoes To Address Health Threats

Factor	Description	Consideration
Mosquito species	Mosquito species vary in the following: Their ability to carry and transmit disease; flight distances; feeding preference (birds, mammals, humans); seasonality; and type of breeding habitat.	Consider these factors when establishing adult and larval thresholds. Often the species and biology of the mosquito are more important in developing thresholds than the relative abundance.
Proximity to human populations	The distance from potential mosquito habitat on NWRs to population centers (numbers and density).	The potential to produce large numbers of mosquitoes in close proximity to population centers may result in less tolerance or lower thresholds for implementation of mosquito control on NWRs.
Weather patterns	Prevailing wind patterns, precipitation, and temperatures.	Prevailing wind patterns that carry mosquitoes from refuge habitats to population centers may require lower thresholds. Inclement weather conditions may prevent mosquitoes from moving off-refuge, resulting in higher thresholds.
Cultural mosquito tolerance	The tolerance of different populations may vary by region of the country and associated culture and tradition.	In many parts of the country, residents accept mosquitoes as a way of life, resulting in higher mosquito management thresholds. NWRs in highly populated areas may require lower thresholds because of the intolerance of urban dwellers to mosquitoes.
Adults harbored, but not produced, on-refuge ...	Refuge provides resting areas for adult mosquitoes produced in the surrounding landscape.	Threshold for mosquito management on the refuge should be high with an emphasis for treatment of mosquito breeding habitat off refuge.

Factor	Description	Consideration
Spatial extent of mosquito breeding habitat	The relative availability of mosquito habitat within the landscape that includes the refuge.	If the refuge is a primary breeding area for mosquitoes that likely affect human health, threshold may be lower. If refuge mosquito habitats are insignificant in the context of the landscape, thresholds may be higher.
Natural predator populations	Balanced predator-prey populations may limit mosquito production.	If refuge vertebrate and invertebrate prey populations are adequate to control mosquitoes, threshold for treatment should be high.
Type of mosquito habitat	Preferred breeding habitat for mosquitoes is species-specific.	Because breeding habitat is species-specific, correlate thresholds for each species to initiate control with appropriate habitat types.
Water quality	Water quality influences mosquito productivity.	High organic content in water may increase mosquito productivity, lower natural predator abundance, and may require lower thresholds.
Opportunities for water and vegetation management.	Management of water levels and vegetation may reduce mosquito productivity.	Thresholds for treatment should be higher where we can control mosquitoes through habitat management.
Presence/absence of vector control agency	Many areas do not have adequate human populations to support vector control. In addition, resources available for mosquito management vary among districts.	Thresholds for management may be much higher or non-existent in areas without vector control.
Accessibility for monitoring/control	Refuges may not have adequate access to monitor or implement mosquito management.	Thresholds will probably be higher for refuges with limited access that will require cost-prohibitive monitoring and treatment strategies.
History of mosquito borne diseases in area	Past monitoring of wildlife, mosquito pools, horses, sentinel chickens, and humans have documented mosquito-borne diseases.	Thresholds in areas with a history of mosquito-borne disease(s) will likely be lower.

[FR Doc. E7–20201 Filed 10–12–07; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amended Tribal-State Compact.

SUMMARY: This notice publishes approval of the Tribal-State Class III Gaming Compact between the State of New Mexico and the Pueblo of Laguna.

DATES: *Effective Date:* October 15, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State Compacts and Amendments for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment includes a provision that would eliminate any payments to the state should the state permit any licensed horse racetrack to increase number of machines, increase hours of operation, allow operation of gaming machines outside licensed premises or operate table games. This Amendment extends the term of the Compact until 2037.

Dated: October 5, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–20197 Filed 10–12–07; 8:45 am]
BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID 100 1220MA 241A: DBG081001]

Notice of Public Meeting: Joint Recreation Resource Advisory Council Subcommittee to the Boise and Twin Falls Districts, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise and Twin Falls District Recreation Resource Advisory Council (Rec-RAC) Subcommittee, will hold a meeting as indicated below.

DATES: The meeting will be held November 14, 2007, beginning at 9:30 a.m. and adjourning at 4:30 p.m. The meeting will be held at the Three Island State Park Visitors Center, West Madison Street, Glenns Ferry, Idaho. Public comment periods will be held before the conclusion of the meeting.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393, or Beckie Wagoner, Administrative Assistant, Twin Falls District, 2536 Kimberly Rd., Twin Falls, ID 83301, (208) 735–2063.

SUPPLEMENTARY INFORMATION: In accordance with section 4 of the Federal Lands Recreation Enhancement Act of 2005, a Subcommittee has been established to provide advise to the Secretary of the Interior, through the BLM, in the form of recommendations that relate to public concerns regarding the implementation, elimination or expansion of an amenity recreation fee; or recreation fee program on public lands under the jurisdiction of the U.S. Forest Service and the BLM in both the Boise and Twin Falls Districts located in

southern Idaho. Items on the agenda include review and discussion of information mailed by representatives of the Payette, Boise and Sawtooth National Forests to the Subcommittee Members about proposed implementation, elimination or expansion of identified amenity recreation fees, or fee programs, and; formulation of recommendations for approval or rejection of the fee changes that will be brought before the two full RAC's meeting jointly in the fall of 2007. Agenda items and location may change due to changing circumstances, including wildfire emergencies. All meetings are open to the public. The public may present written comments to the Subcommittee. Each formal subcommittee meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM Coordinators as provided above. Expedited publication is requested to give the public adequate notice.

Dated: October 9, 2007.

Jerry L. Taylor,

District Manager.

[FR Doc. E7–20226 Filed 10–12–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 29, 2007. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 30, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Arkansas County

Wallace Bottom, Address Restricted, Tichnor, 07001147.

COLORADO

Chaffee County

Alexander House, 846 F St., Salida, 07001148.

Kit Carson County

Hudson, Sim, Motor Company, 1332 Senter Ave., Burlington, 07001149.

MAINE

Androscoggin County

Lisbon Falls High School, 4 Campus Ave., Lisbon Falls, 07001150.

Hancock County

Farm House, The, 15 Highbrook Rd., Bar Harbor, 07001152.

Knox County

Common, The, Between Common & Burkett Rds., Union, 07001151.

York County

Brave Boat Harbor Farm, 110 Raynes Neck Rd., York, 07001153.

MISSOURI

Clay County

Atkins—Johnson Farmhouse Property, 6508 N. Jackson Ave., Gladstone, 07001154.

Jackson County

Armour Boulevard Post-World War II Apartment Building Historic District, (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS), 640 & 701 E. Armour Blvd. & 3457 Holmes St., Kansas City, 07001155.

Gillham Court Apartments Building, (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS) 3411 Gillham Rd., Kansas City, 07001156.

Platte County

TWA Administrative Offices Building, 11500 Ambassador Dr., Kansas City, 07001157.

St. Louis Independent city

Olive and Locust Historic Business District, (Auto-Related Resources of St. Louis, Missouri MPS) Roughly bounded by N. Jefferson, Olive, 21st & St. Charles Sts., St. Louis (Independent City), 07001158.

OREGON

Crook County

Roba Ranch, The, 66953 Roba Ranch Rd., Paulina, 07001159.

PENNSYLVANIA

Bucks County

Uneek Havana Cigar Company, 1259 PA 113 (Hilltown Township), Blooming Glen, 07001160.

Monroe County

Shawnee—Minisink Site, Address Restricted, Minisink Hills, 07001161.

Washington County

Charleroi Historic District, Roughly bounded by 1st & 13th Sts., Oakland Ave. & Pennsylvania RR tracks. Charleroi Borough, 07001162.

TENNESSEE

Davidson County

Beech Grove, (Historic Family Farms in Middle Tennessee MPS) 8423 Old Harding Pike, Nashville, 07001163.

Hardeman County

Robertson Family Farm, 2715 Newsom Rd., Whiteville, 07001164.

Shelby County

Knickerbocker Apartments, The, 23–25 S. McLean Blvd., Memphis, 07001165.

Pippin Roller Coaster, Mid-South Fairgrounds bounded by E. Pkwy., Central & Southern Aves. & Early Maxwell Blvd., Memphis, 07001166.

Unicoi County

Brown, A.R., House, 241 S. Main Ave., Erwin, 07001167.

UTAH

Salt Lake County

Yalecrest Historic District, Roughly bounded by Sunnyside Ave. (840 S.) to 1300 S. & 1300 E. to 1800 E., Salt Lake City, 07001168.

Tooele County

Davis, David E. House, 400 E. UT 199, Rush Valley, 07001172.

Utah County

Providence Historic District, Roughly bounded by 200 N., 400 E., 500 S. & 200 W., Providence, 07001169.

VERMONT

Rutland County

Kingsley Grist Mill Historic District, East St. & Gorge Rd., Clarendon, 07001170.

Windsor County

Southview Housing Historic District, 1–107 Stanley Rd., Springfield, 07001171.

A request for REMOVAL has been made for the following resources:

COLORADO

Denver County

Beierle Farm, (Denver International Airport MPS) Hudson Rd., just N. of Irondale Rd., Watkins, 92001673.

TENNESSEE

Shelby County

Douglass High School, 3200 Mt. Olive Rd., Memphis, 98000241.

[FR Doc. E7–20274 Filed 10–12–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary of the Interior and Washington State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Wednesday, November 14, 2007, 9 a.m.–12 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Larrick, Assistant Program Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington, 98901; 509–575–5848, extension 209.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review the option of using the acquired habitat lands to mitigate the impacts that occur from the planned conservation measures and develop recommendations. This meeting is open to the public.

Dated: September 25, 2007.

Walter Larrick,

Assistant Program Manager, Pacific Northwest Region.

[FR Doc. 07–5059 Filed 10–12–07; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–616]

In the Matter of Certain Hard Disk Drives, Components Thereof, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 10, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Steven F. Reiber and Mary L. Reiber of Lincoln, California. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hard disk drives, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,354,479, 6,651,864, and 6,935,548. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 4, 2007, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hard disk drives, components thereof, or products containing the same by reason of infringement of one or more of claims 37–39, 50, and 51 of U.S. Patent No. 6,354,479, claims 28, 30, and 33–35 of U.S. Patent No. 6,651,864, and claim 3 of U.S. Patent No. 6,935,548, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—Steven F. Reiber, Mary L. Reiber, 867 Mossy Ridge Lane, Lincoln, California 95648.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Western Digital Corporation, 20511 Lake Forest Drive, Lake Forest, California 92630

Seagate Technology, 920 Disc Drive, Scotts Valley, California 95066

Toshiba America Information Systems, Inc., 9740 Irvine Boulevard, Irvine, California 92616

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304

Dell Inc., One Dell Way, Round Rock, Texas 78682

(c) The Commission investigative attorney, party to this investigation, is Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401L, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Carl C. Charneski is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist order or both directed against a respondent.

By order of the Commission.

Issued: October 9, 2007

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E7–20199 Filed 10–12–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Respirator Program Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 14, 2007.

ADDRESSES: Send comments to, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *Ferraro.Debbie@DOL.GOV.* Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a)(7) of the Mine Act mandates in part that mandatory standards prescribe the use of protective equipment where appropriate to protect miners against hazards. Where protective equipment or respirators are required because of exposure to harmful substances, MSHA must ensure that such equipment offers adequate protection for workers. A written respirator program that addresses such issues as selection, fitting, use, and maintenance of respirators is essential for ensuring that workers are properly and effectively using the equipment. Records of fit-testing are essential for determining that the worker is wearing the proper respirator.

Title 30 CFR Sections 56.5005 and 57.5005 require metal and nonmetal mine operators to institute a respirator program governing selection, maintenance, training, fitting, supervision, cleaning and use of respirators. To control those occupational diseases caused by breathing air contaminated with harmful dusts, fumes, mists, gases, or vapors, the primary objective is to prevent atmospheric contamination. MSHA's current policy, as prescribed by regulation, is to require that this be accomplished by feasible engineering measures. When effective controls are not feasible, or while they are being instituted, or during occasional entry into hazardous atmospheres to perform maintenance or investigations, appropriate respirators are to be used in accordance with established procedures protecting the miners.

Sections 56.5005 and 57.5005 incorporate by reference requirements of the American National Standards Institute (ANSI Z88.2–1969). These incorporated requirements mandate that miners who must wear respirators be fit-tested to the respirators that they will use. Certain records are also required to be kept in connection with respirators, including records of the date of issuance of the respirator, and fit-test results. The fit-testing records are essential for determining that the worker is wearing the proper respirator.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Respirator Program Records. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs'', then selecting ''Fed Reg Docs.''

III. Current Actions

The mine operator uses the information to properly issue respiratory protection to miners when feasible engineering and/or administrative controls do not reduce the exposure to permissible levels. Fit-testing records are used to ensure that a respirator worn by an individual is in fact the one for which that individual received a tight fit. MSHA uses the information to determine compliance with the standard.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Respirator Program Records.

OMB Number: 1219–0048.
Recordkeeping: None.
Affected Public: Business or other for-profit.
Cite/Reference: 30 CFR 56.5005 and 57.5005.
Total Respondents: 300.
Total Responses: 5,400.
Estimated Total Burden Hours: 2,174 hours.
Burden Cost: $90,000.
Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–20237 Filed 10–12–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Hoist Operators' Physical Fitness

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 14, 2007.

ADDRESSES: Send comments to Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR Sections 56.19057 and 57.19057 require the annual examination and certification of a hoist operator's fitness. The safety of all metal and nonmetallic miners riding hoist conveyances is dependent upon the attentiveness and physical capabilities of the hoist operator, in routine and emergency evacuations. Improper movement, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers. While small mine operators are likely to have fewer hoists and hoist operators, Congress intended that the Mine Act be enforced at all mining operations within its jurisdiction regardless of size and that information collection and record keeping requirements be consistent with efficient and effective enforcement of the Mine Act. However, Congress did recognize that small operations may face problems in complying with some Mine Act provisions. Section 103(e) of the Mine Act directs the Secretary of Labor not to impose an unreasonable burden on small businesses when obtaining any information under the Mine Act. This information collection does not have a significant impact on a substantial number of small entities.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Hoist Operators' Physical Fitness. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs'', then selecting ''Fed Reg Docs.''

III. Current Actions

Title 30 CFR Sections 56.19057 and 57.19057 require the annual examination and certification of a hoist operator's fitness. The safety of all metal and nonmetallic miners riding hoist conveyances is dependent upon the attentiveness and physical capabilities of the hoist operators, in routine and emergency evacuations. Improper movements, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers. Small mine operators are likely to have fewer hoists and hoist operators.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Hoist Operators' Physical Fitness.
OMB Number: 1219–0049.
Affected Public: Business or other for-profit.
Total Respondents: 64.
Total Responses: 320.
Estimated Total Burden Hours: 10.7.
Total Annualized Capital/Startup Costs: $0.
Total Operating and Maintenance Costs: $98,560.
Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–20238 Filed 10–12–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Rock Burst Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation

program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 14, 2007.

ADDRESSES: Send comments to Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *Ferraro.Debbie@DOL.GOV.* Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

When rock bursts occur in an underground mine, they pose a serious threat to the safety of miners in the area affected by the burst. These bursts may reasonably be expected to result in the entrapment, serious physical harm, or death, of miners. Recently developed mining technology now permits mine operators to monitor rock stresses, which helps predict an impending burst. These predictions can be used by a mine operator to move miners to safer locations and to establish areas that need relief drilling. Title 30, Section 57.3461 requires operators of underground metal and nonmetal mines to develop a rock burst control plan within 90 days after a rock burst has occurred.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Rock Burst Control Plans. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond. A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs'', then selecting ''Fed Reg Docs.''

III. Current Actions

This information collection needs to be extended to protect miners from entrapment, serious physical harm or death, in metal and nonmetal underground mines with a history of rock bursts.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Rock Burst Control Plans.
OMB Number: 1219–0097.
Affected Public: Business or other for-profit.
Frequency: On occasion.
Cite/Reference: 30 CFR 57.3461.
Total Respondents: 2.
Total Responses: 2.
Average Time per Response: 12 hours.
Estimated Total Burden Hours: 24 hours.
Total Annualized Capital/Startup Costs: $0.
Total Operating and Maintenance Costs: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–20239 Filed 10–12–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science (1182).

Date and Time: Friday, November 30, 2007, 8:30 a.m.–1:30 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Ms. Mayra Montrose, Program Manager, Room 1282, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–4757.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the 2007 National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 10, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–20202 Filed 10–12–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

NUREG/CR–XXXX, ''Approaches for Using Traditional Probabilistic Risk Assessment Methods for Digital Systems''; Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is conducting research to support development of regulatory guidance for using risk information related to digital systems in the licensing actions of nuclear power plants (NPPs). The objective of this research is to identify and develop methods, analytical tools, and regulatory guidance to support (1) Using information on the risks of digital systems in NPP licensing decisions, and (2) including models of digital systems into NPP probabilistic risk assessments (PRAs).

In support of this research, Brookhaven National Laboratory (BNL) is working on the use of traditional

methods to develop and quantitatively assess reliability models of digital systems. As part of this work, BNL will apply two selected traditional methods to two benchmark digital systems. The initial tasks in the BNL project, including preparatory work for developing the reliability models of the first benchmark system, are addressed in draft NUREG/CR–XXXX, ''Approaches for Using Traditional Probabilistic Risk Assessment Methods for Digital Systems.'' This notice announces the availability of the draft NUREG/CR for public comment.

DATES: Please submit comments on NUREG/CR–XXXX, ''Approaches for Using Traditional Probabilistic Risk Assessment Methods for Digital Systems,'' by November 14, 2007. Comments received after this date will be considered if practical to do so, but the NRC staff is able to ensure consideration only for those comments received on or before this date.

ADDRESSES: NUREG/CR–XXXX, ''Approaches for Using Traditional Probabilistic Risk Assessment Methods for Digital Systems,'' is available for inspection and copying for a fee at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The ADAMS Accession Numbers for NUREG/CR–XXXX, ''Approaches for Using Traditional Probabilistic Risk Assessment Methods for Digital Systems,'' are ML072690235 (main report) and ML072690238 (appendices). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

This document will also be posted on the NRC's public Web site at: *http://www.nrc.gov/about-nrc/regulatory/research/digital/tech-reference.html#one*.

Please submit comments to Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may also deliver comments to 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:30 p.m. Federal workdays, or by e-mail to: *nrcrep@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Alan Kuritzky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6255, e-mail: *ask1@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of October, 2007.

For the U.S. Nuclear Regulatory Commission.

Christiana Lui,

Director, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. E7–20301 Filed 10–12–07; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 2007. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 2007. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 2007.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Protection Act of 2006, for premium payment years beginning in 2006 or 2007, the required interest rate is the ''applicable percentage'' of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year'').

On February 2, 2007 (at 72 FR 4955), the Internal Revenue Service (IRS) published final regulations containing updated mortality tables for determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA for plan years beginning on or after January 1, 2007. As a result, in accordance with section 4006(a)(3)(E)(iii)(II) of ERISA, the ''applicable percentage'' to be used in determining the required interest rate for plan years beginning in 2007 is 100 percent.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 2007 is 6.23 percent (i.e., 100 percent of the 6.23 percent composite corporate bond rate for September 2007 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 2006 and October 2007.

For premium payment years beginning in:	The required interest rate is:
November 2006	5.05

For premium payment years beginning in:	The required interest rate is:
December 2006	4.90
January 2007	5.75
February 2007	5.89
March 2007	5.85
April 2007	5.84
May 2007	5.98
June 2007	6.01
July 2007	6.32
August 2007	6.33
September 2007	6.33
October 2007	6.23

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and section 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 2007, as announced by the IRS, is 8 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5
10/1/03	3/31/04	4
4/1/04	6/30/04	5
7/1/04	9/30/04	4
10/1/04	3/31/05	5
4/1/05	9/30/05	6
10/1/05	6/30/06	7
7/1/06	12/31/07	8

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the fourth quarter (October through December) of 2007 (*i.e.*, the rate reported for September 17, 2007) is 8.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25
10/1/03	9/30/04	4.00
10/1/04	12/31/04	4.50
1/1/05	3/31/05	5.25
4/1/05	6/30/05	5.50
7/1/05	9/30/05	6.00
10/1/05	12/31/05	6.50
1/1/06	3/31/06	7.25
4/1/06	6/30/06	7.50
7/1/06	9/30/06	8.00
10/1/06	12/31/07	8.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in November 2007 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of October 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–20268 Filed 10–12–07; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 13e–3 (Schedule 13E–3), OMB Control No. 3235–0007, SEC File No. 270–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Rule 13e–3 and Schedule 13E–3 (17 CFR 240.13e–3 and 240.13e–100)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with information concerning going private transactions that is important in determining how to respond to such transactions. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. This information is made available to the public. Information provided on Schedule 13E–3 is mandatory. We estimate that Schedule 13E–3 is filed by approximately 600 issuers annually and it takes approximately 137.25 hours per response. We estimate that 25% of the 137.25 hours per response is prepared by the filer for a total annual reporting burden of 20,588 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Alexander_T._Hunt@omb.eop.gov.*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and

Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 4, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–20215 Filed 10–12–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [72 FR 57615, October 10, 2007].

Status: Closed Meeting.

Place: 100 F Street, NE., Washington, DC.

Announcement of Additional Meeting: Additional Meeting (Week of October 9, 2007).

The Commission has scheduled a Closed Meeting for Wednesday, October 10, 2007 at 4:30 p.m.

Commissioners, the Secretary to the Commission, and the General Counsel of the Commission will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, exemption 5 U.S.C. 552b(c)(5), (7), (9)(ii) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, October 10, 2007 will be:

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 10, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–20281 Filed 10–12–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56631; File No. CBOE–2007–99]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to a Delta Hedging Exemption From Equity Options Position Limits

October 9, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 21, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the CBOE. The Exchange filed Amendment No. 1 to the proposal on October 4, 2007.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to create a delta hedging exemption from equity options position limits. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.com/legal.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the previously filed proposed rule change in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

All options traded on the Exchange are subject to position and exercise limits, as provided under CBOE Rules 4.11 and 4.12.[4] Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control one or more affiliated persons or entities may have over one particular options class or the security or securities that underlie that options class. Exchange rules also contain various hedge exemptions to allow certain hedged positions in excess of the applicable standard position limit.[5]

Over the years, CBOE has increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.[6] These hedge exemptions generally require a one-to-one hedge (*i.e.*, one stock option contract must be hedged by the number of shares underlying the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as ''delta hedging.'' Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.[7] Delta hedging is a widely accepted method for risk management.

Delta Neutral-Based Equity Hedge Exemption. The Exchange proposes to adopt a new exemption from equity options position and exercise limits[8] for positions held by CBOE members and certain of their affiliates that are ''delta

[4] Position limits for index options are provided separately under CBOE Rules 24.4, 24.4A, and 24.4B.

[5] *See* Interpretation and Policy .04 to Rule 4.11.

[6] *See, e.g.*, Securities Exchange Act Release No. 55176 (January 25, 2007), 72 FR 4741 (February 1, 2007) (SR–CBOE–2007–08); Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30); and Securities Exchange Act Release No. 45603 (March 20, 2002), 67 FR 14751 (March 27, 2002) (SR–CBOE–00–12).

[7] To illustrate, a stock option contract with a delta of .5 will move $0.50 for every $1.00 move in the underlying stock.

[8] Rule 4.12 establishes exercise limits for an option at the same level as the option's position limit under Rule 4.11; therefore, no changes are proposed to Rule 4.12.

neutral'' [9] under a ''permitted pricing model'' (as defined below), subject to certain conditions (''Exemption''). The proposed Exemption would apply only to equity options (stock options and options on exchange-traded funds (''ETFs'')).[10]

Any equity option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the ''option contract equivalent of the net delta'' of such position would be subject to the appropriate position limit.[11]

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other financial instrument position in connection with more than one hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A ''permitted pricing model'' is defined in proposed Rule 4.11.04(c)(C) to mean the pricing model maintained and operated by The Options Clearing Corporation (''OCC'') and the pricing models used by (i) A member or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3–1 under the Act; (ii) a financial holding company (''FHC'') or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; [12] (iii) a Commission-registered OTC derivatives dealer; [13] and (iv) a national bank.[14]

Aggregation of Accounts. Members and non-member affiliates relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions in or relating to the security underlying the relevant options position that are owned or controlled by the member, or its affiliates.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Rule 4.11.03, exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.[15]

The Exchange has set forth in Regulatory Circular RG04–45 (''Aggregation Circular'') the conditions under which it will deem no control relationship to exist between affiliated broker-dealers and between separate and distinct trading units within the same broker-dealer. The Exchange proposes to amend the Aggregation Circular to include affiliated entities, not only affiliated broker-dealers as in the current version.

Any member or non-member affiliate relying on the Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Exemption for purposes of compliance with Exchange position or exercise limits.[16]

Obligations of Members and Affiliates. Any member relying on the Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Exemption. In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this Exemption.[17]

The options positions of a non-member affiliate relying on the Exemption must be carried by a member with which it is affiliated. A member carrying an account that includes an equity option position for a non-member affiliate that intends to rely on the Exemption would be required to obtain from such non-member affiliate a written certification that it is using a

[9] The term ''delta neutral'' is defined in proposed Rule 4.11.04(c)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

[10] The Exchange intends to submit a separate proposed rule change to adopt a delta neutral-based hedge exemption for certain index options and to expand the delta neutral-based hedge exemption for ETF options to allow highly correlated instruments to be included in any ETF option net delta calculation.

[11] Under proposed Rule 4.11.04(c)(B), the term ''options contract equivalent of the net delta'' is defined as the net delta divided by the number of shares underlying the option contract, and the term ''net delta'' is defined as, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

[12] The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) *The* requirements of the Board of Governors of the Federal Reserve System (''FRB''), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the FRB, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where ''principal regulator'' means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. *See* subparagraph (C)(3) of proposed Rule 4.11.04(c).

[13] The pricing model of a Commission-registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to Rules 15c3–1 and 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* subparagraph (C)(4) of proposed Rule 4.11.04(c).

[14] The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* subparagraph (C)(5) of proposed Rule 4.11.04(c).

[15] *See* subparagraph (D) of proposed Rule 4.11.04(c).

[16] *See* proposed Rule 4.11.04(c)(D)(3).

[17] *See* subparagraph (E) of proposed Rule 4.11.04(c).

permitted pricing model as defined in the rule for purposes of the Exemption.[18]

Reporting. Under proposed Rule 4.11.04(c)(F), each member relying on the Exemption would be required to report, in accordance with Rule 4.13,[19] (i) All equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Rule 4.11.04(c)(D), for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Rule 4.11, the net delta and the options contract equivalent of the net delta of such position.

The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report system and/or OCC reports to allow a member to indicate that an equity options position is delta neutral.

Records. Under proposed Rule 4.11.04(c)(G), each member relying on the Exemption would be required to (i) Retain, and would be required to undertake reasonable efforts to ensure that any non-member affiliate of the member relying on the exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.[20]

Reliance on Federal Oversight. As provided under proposed Rule 4.11.04(c)(C), a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the Commission, the FRB or another federal financial regulator. In adopting the proposed Exemption the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

CBOE will announce the effective date of the proposed rule change in a regulatory circular to be published no later than 60 days after Commission approval. The effective date shall be no later than 30 days after publication of the regulatory circular.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[21] in general, and furthers the objectives of section 6(b)(5) of the Act,[22] in particular, in that it is designed in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

[18] In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) *Is* relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the member if it ceases to rely on the Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. *See* subparagraph (E)(3) of proposed Rule 4.11.04(c).

[19] Exchange Rule 4.13 requires, among other things, that members report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

[20] A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed Rule 4.11.04(c)(E)(3)(ii)(d).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (S7–30–97) (adopting rules relating to OTC Derivatives Dealers).

Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–99 and should be submitted on or before November 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Nancy M. Morris,

Secretary.

[FR Doc. E7–20216 Filed 10–12–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56621; File No. SR–NYSE–2007–94]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend NYSE Rule 70.30 Relating to the Definition of a Crowd

October 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. On October 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Exchange Rule 70.30 to define the Crowd as the rooms on the Exchange Trading Floor (''Floor'') that contain active posts/panels where Floor brokers are able to conduct business. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.nyse.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, NYSE proposes to amend Exchange Rule 70.30, which sets forth the definition of a Crowd. The Exchange seeks to define the Crowd as the rooms on the Floor that contain active posts/panels where Floor brokers are able to conduct business.

Currently, a Crowd is defined as one of the three trading zones located on the Floor where Floor brokers are able to conduct business at each post/panel within the Crowd.[5] The Main Room and Garage each constitute a separate Crowd. The third Crowd consists of the current Blue Room and the Extended Blue Room (''EBR''). It was believed that defining the Crowd in this manner best facilitated the essential interaction among Floor participants and between Floor brokers and orders in the Display Book® System.

As the Exchange has gained experience operating its Hybrid Market, certain practical considerations make it necessary for the Exchange to modify its rules. Based on its experience, the Exchange seeks to amend the definition of a Crowd.[6]

The Exchange is currently in the process of consolidating its Floor operations.[7] At present, the Exchange operates four rooms that make up the Floor (*i.e.,* the Main Room, the Garage, the Blue Room, and the EBR).[8] The trading floor consolidation plan calls for the closing of the Blue Room and the EBR. The specialist firms and the floor brokerage firms that currently occupy the Blue Room and the EBR will be relocated to the Main Room and the Garage. This consolidation will significantly reduce the physical area where Floor brokers will be conducting business.

It is anticipated that the consolidation of the Exchange's Floor operation will be accomplished by first moving the posts/panels located in the EBR and the Blue Room to new locations in the Main Room and the Garage. Until the relocation of the posts/panels from the EBR and Blue Room is complete, Floor broker booths will remain in the EBR and the Blue Room. Upon completion of the relocation of the posts/panels in the EBR and the Blue Room, the Exchange will commence moving Floor broker booths located in the EBR and the Blue Room into new locations in the Main Room and the Garage. During this transition period, to end no later than December 15, 2007, Floor brokers will be considered part of the Crowd and permitted to electronically represent orders from the EBR and the Blue Room.

The Exchange believes that the reduction of the physical areas that constitute the Floor and the increase of electronic trading warrant amending the definition of the Crowd. As such, NYSE proposes to amend Exchange Rule 70.30 to define the Crowd as the rooms on the Floor that contain active posts/panels where Floor brokers are able to conduct business. The Exchange submits that the proposed amendment to the Rule accurately identifies the areas where the essential interaction among Floor participants and between Floor brokers and orders in the Display Book® System occur. Accordingly, pursuant to the proposal, a Floor broker will be considered to be in the Crowd when he or she is physically present in one of the aforementioned rooms.

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 55316 (February 20, 2007), 72 FR 8825 (February 27, 2007) (SR–NYSE–2007–14).

[6] Telephone conversation on October 4, 2007, between Deanna Logan, Director, Office of the General Counsel, Exchange, and David Liu, Assistant Director, Division of Market Regulation, Commission.

[7] The Exchange states that it anticipates that the consolidation of the Floor will be completed no later than November 2007.

[8] In February 2007, the Exchange closed the operation of a fifth trading room located at 30 Broad Street.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and with Section 6(b)(5) of the Act [10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] As required under Rule 19b–4(f)(6)(iii),[13] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that, given the Exchange's plan to consolidate its Floor operations, the proposed rule change would enable Floor brokers to promptly facilitate transactions from the physical areas on the Floor where business will ultimately be conducted. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–94 and should be submitted on or before November 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E7–20214 Filed 10–12–07; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on October 4, 2007, the date on which the Exchange filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission has scheduled a public hearing regarding whether Amendment 9 pertaining to offenses involving cocaine base (''crack'') and Amendment 12 pertaining to certain criminal history rules, see 72 FR 28558 (May 21, 2007); 72 FR 51882 (September 11, 2007), should be applied retroactively to previously sentenced defendants.

DATES: The Commission has scheduled a public hearing for November 13, 2007. Requests to testify should be received by the Commission not later than October 29, 2007. Written testimony for the public hearing must be received by the Commission not later than November 5,

2007. The Commission requests that, to the extent practicable, written testimony be submitted electronically to *PubAffairs@ussc.gov* with a subject of ''Public Hearing Testimony''. The hearing will be held at Georgetown University Law Center, Gerwirz Student Center, Twelfth Floor Conference Room, 120 F Street, NW., Washington, DC at 9:30 a.m.

ADDRESSES: Send testimony via electronic mail to: *PubAffairs@ussc.gov,* with a subject of ''Public Hearing Testimony''. Testimony may also be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Section 3582(c)(2) of title 18, United States Code, provides that'' ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.'' The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, written testimony should address each of these factors. Data relating to possible retroactivity maybe accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(x); USSC Rules of Practice and Procedure, Rule 4.5.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E7–20264 Filed 10–12–07; 8:45 am]

BILLING CODE 2211–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0078]

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Quarterly Meeting.

DATES: October 31, 2007—9 a.m. to 5 p.m.

November 1, 2007—9 a.m. to 5 p.m.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Phone: 703–486–1111.

SUPPLEMENTARY INFORMATION:

Type of meeting: On October 31, and November 1, 2007 the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a quarterly meeting open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings and presentations on matters of interest, conduct full Panel deliberations on the implementation of the Act and receive public testimony.

The Panel will meet in person commencing on Wednesday October 31, 2007, from 9 a.m. until 5 p.m. The quarterly meeting will continue on Thursday, November 1, 2007, from 9 a.m. until 5 p.m.

Agenda: The full agenda will be posted at least one week before the start of the meeting on the Internet at *http://www.ssa.gov/work/panel/meeting_information/agendas.html*, or can be received, in advance, electronically or by fax upon request. Public testimony will be heard on Wednesday, October 31 from 11:30 a.m. to 12 p.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each individual providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute, verbal presentation.

Full written testimony on the Implementation of the Ticket to Work and Work Incentives Program, no longer than five (5) pages, may be submitted in person or by mail, fax or e-mail on an ongoing basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Ms. Debra Tidwell-Peters, at *Debra.Tidwell-Peters@ssa.gov* or by calling (202) 358–6126.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Debra Tidwell Peters at (202) 358–6126.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 2, 2007.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. E7–20245 Filed 10–12–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5958]

Culturally Significant Objects Imported for Exhibition Determinations: ''Lucien Freud: The Painter's Etchings''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be

included in the exhibition ''Lucien Freud: The Painter's Etchings,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, from on or about December 16, 2007, until on or about March 10, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 5, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–20260 Filed 10–12–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2007–28969]

Publication of Interim Guidance on the Information Sharing Specifications and Data Exchange Formats for the Real-Time System Management Information Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of publication of interim guidance; request for comments.

SUMMARY: The purpose of this notice is to: (1) Announce the publication of interim guidance; and (2) solicit public comment on the contents of the interim guidance. Section 1201 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005) established the Real-Time System Management Information Program to make traffic and travel conditions information available to the traveling public and to ease the sharing of traffic and travel conditions information among public agencies and private enterprise. This interim guidance will be in effect when published in the **Federal Register**; however, we will review all comments submitted to the docket and will modify the guidance as necessary or appropriate.

DATES: Comments must be received on or before February 12, 2008.

FOR FURTHER INFORMATION CONTACT: James Pol, Office of Transportation Management, (202) 366–4374; or Lisa MacPhee, Office of the Chief Counsel, (202) 366–1392, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the U.S. Department of Transportation's Document Management System (DMS) at: *http://dms.dot.gov/submit*. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in a **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov*.

Background

Section 1201 of SAFETEA–LU established the Real-Time System Management Information Program to provide, in all States, the capability to monitor, in real-time, the traffic and travel conditions of the major highways of the United States and to share that data with State and local governments and with the traveling public. On May 4, 2006, the FHWA published a notice in the **Federal Register** at 71 FR 26399 outlining some proposed preliminary program parameters and seeing public comments on the proposed description of the Real-Time System Management Information Program, including its outcome goals definitions for various program parameters, and the current status of related activities in the States. We are using the comments we received in response to that notice to develop regulations on the Real-Time System Management Information Program. We expect to publish our notice of proposed rulemaking (NPRM) for this program shortly.

Our forthcoming NPRM does not pertain to subsections 1201(b) and 1201(c)(2). Subsection 1201(b) of SAFETEA–LU requires the FHWA to ''establish'' data exchange formats within 2 years of the enactment of SAFETEA–LU, or August 10, 2007. Subsection 1201(c)(2) requires that ''States shall incorporate data exchange formats established by the Secretary under subsection (b) to ensure that the data provided by highway and transit monitoring systems may be readily exchanged with State and local governments and may be made available to the traveling public.''

Further analysis by the FHWA leads to the conclusion that subsections 1201(a)(1) and 1201(a)(2) do not specifically state that the use of FHWA-identified data exchange formats is a requirement for the 1201 programs, but only that the purpose of the section is to meet the larger goals including sharing data among the State and local governments and the traveling public. Furthermore, subsection 1201(d) makes funds eligible to meet the larger goals in 1201(a), but does not specifically mention that 1201(b) data exchange formats must be used for an entity to be eligible to apply Federal funds towards establishing Real-Time System Management Information Programs.

The comments and input received on these questions will not affect future rulemaking regarding the Real-Time System Management Information Program as described above. Rather, the comments and input received on these questions may be used by the FHWA for future guidance development and/or regulatory changes. We invite the public to submit comments on this interim guidance. We plan to issue final guidance after we have evaluated all the comments received on this interim guidance. Comments, including those from the State DOTs, regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating the impacts of Data Exchange Formats.

—What guidance would facilitate the application of data exchange formats in your organization?

—Does the reference document provide adequate detail on the nature of interoperability to be attained through application of the data exchange formats?

—Does your organization make use of the ATIS–01 Broadcast Traveler Information Market Package defined in the National ITS Architecture?
—What is a reasonable interval between publications of new versions of the data exchange formats?
—Is there sufficient detail in the ''Functional Area/Requirement Description?'' If not, how much further requirement description would be required?
—Many of the requirements map to messages that have optional elements. Should there be changes to the identification of the optional elements, which would change the nature of the message as defined by the Standard Development Organization?
—Does your organization make use of the ITS Standards that are referenced in the data exchange formats?
—Would independent certification or self-certification be more effective for validating the application of the data exchange formats?
—Do the data exchange formats relate to the operational practices of your organization?

The FHWA also welcomes comments and input on the published data exchange formats that address areas of interest that are not necessarily addressed in the questions posed above.

(Authority: Section 1201, Pub. L. 109–59; 23 U.S.C. 315; 23 U.S.C. 120; 49 CFR 1.48.)

Issued on: October 5, 2007.

J. Richard Capka,

Administrator, Federal Highway Administration.

Real-Time Information Program: Information Sharing Specifications and Data Exchange Format Reference Document

Prepared for U.S. Department of Transportation, Federal Highway Administration (FHWA) & Research and Innovative Technology Administration (RITA) By National ITS Architecture Team

Version 1.0 Release August, 2007

Background

Section 1201 of SAFTEA–LU establishes the Real-Time System Management Information Program. The goals of this program are to improve security of the surface transportation system, address congestion problems, support improved response to weather events and surface transportation incidents, and facilitate national and regional highway traveler information. The desired outcomes are to make Traffic and Travel Conditions Information available to the traveling public and to ease the sharing of Traffic and Travel Conditions Information among public agencies and private enterprise.

The types of information considered for the Real-time Information Program (RTIP) include but are not limited to

- Congestion information,
- Traffic incidents that block the roadway,
- Roadway weather conditions,
- Public transportation service disruptions,
- Construction activities affecting travel conditions, and
- Travel times on roadway links.

The information needed for RTIP is not necessarily available everywhere, but the interface will be established with the data that is available. The RTIP is not concerned with developing the sources of information but with providing a standard interface to obtain the information when it does exist. Therefore, the RTIP specifications will not address data collection. They will focus on center-to-center exchanges and information that should be made available to travelers. In addition, these specifications will address information exchanges only and will not include device control.

There are two efforts described in Section 1201. One is the establishment of the RTIP in each State per the requirements of Section 1201. This information system is to be created in concert with the updates of regional ITS architectures as they are maintained. Two is the establishment of data exchange formats to facilitate the exchange of information.

These data exchange formats will leverage existing ITS standards to the greatest extent possible.

This document establishes three components to ease the exchange of Traffic and Travel Conditions Information:

- A Concept of Operations to define the entire RTIP scope,
- A set of functional specifications to describe a full RTIP, based upon the functional specifications set forth in the National ITS Architecture,
- An ITS Standards reference that draws the association between the RTIP functional specifications and particular ITS standards.

Concept of Operations

Scope

The RTIP is intended to establish a standard data format to exchange traffic and travel conditions on major highways among State and local government systems and the traveling public. The real-time traffic and travel information to be exchanged with this format includes

- Basic information for managing and operating the surface transportation system, excluding control
- Statewide incident reporting system information
- Surface transportation system security information
- Congestion information
- Weather conditions
- Surface transportation incidents
- Traveler information

A RTIP may be established in each State to leverage the current and future capabilities of monitoring the traffic and travel conditions of the major highways. The data exchange formats will be used for standardized, interoperable communication among transportation management systems and the information service providers that collect that information to disseminate to the traveling public. The transportation management systems could encompass traffic management, transit management, maintenance and construction management, and emergency management organizations.

ITS America's Interoperability Subcommittee adopted the following, in accord with ISO TC 204, as the definition of interoperability: ''Interoperability is the ability of systems to provide services and to accept services from other systems and to use the services so exchanged to enable them to operate effectively together.'' In examining systems for interoperability, it is useful to distinguish two degrees of interoperability, ''pair-wise'' and ''end-to-end'' interoperability. Pair-wise interoperability involves verifying that two systems are able to exchange data and that the data has the same meaning to each system and leads to the expected functionality. ''End-to-end'' interoperability involves verifying that the flow and use of data are consistent from initial input to final outcome. The RTIP is primarily focused on the ''pair-wise'' interoperability with the specification of common data formats.

The scope of this program will reach all States. While not all State or local organizations collect and disseminate the same types of information, standardized formats will be mapped to the types of information in use. Standard data exchange formats will aid in the deployment of standard interfaces among surface transportation systems and information services. The RTIP is focused on center-to-center interfaces and the current conditions of the surface transportation system.

The RTIP is really about implementing interface standards consistently across the country and facilitating the implementation of data

collection and dissemination systems to provide more of the information needed by the transportation management community and the traveling public. The standardized common data exchange formats reside above the traditional 7-Layer ISO OSI communications stack. The OSI layers below the Application Layer can vary depending on the ITS deployment and will most likely be Internet (TCP/IP) based.

Current System or Situation

Over the past decade, ITS standards have been developed or are in the latter stages of development. Traffic management, transit management, and emergency management systems have been deployed or are being developed that use different standardized interfaces, different versions of the standards, or custom (i.e., non-standardized) interfaces. This leads to potential difficulties in data exchange from one system to another. Transportation management systems are increasingly producing congestion-related information but the impact of that information to address congestion is diminished because of inefficient data sharing practices.

Transportation system operators need information about incidents, the current state of the roadway conditions, and events that are planned in the area of operation. Current conditions or issues in a neighboring geographic area may affect the local transportation system in ways both subtle and pronounced. The transit operator needs many of the same pieces of information to provide the best service to their riders. Information service providers collect the same kind of information, integrate, and provide it to the public to aid better travel decision making.

Information is available everywhere in the surface transportation system, however, it is not always accessible to transportation system operators or the traveling public due to the lack of standard interfaces. The key to unlocking this information is to establish standard data exchange formats that are implemented consistently in every State. This would allow a transportation system utilizing the standard data exchange formats to develop an interface to the outside world to gather external information and make their own information available to others who need it without building multiple interfaces for each external system.

Justification

The RTIP is established in SAFETEA–LU in Section 1201. However, the justification for this program goes beyond the legislation. The premise of Intelligent Transportation Systems is to connect the islands of information in the surface transportation system. Data collected by one agency's system is often beneficial to a neighboring system or to a traveler information system. This does not mean that every system has to be physically connected to all others. Establishing data exchange formats make data collected by a system available to any organization that wishes to retrieve it in that same data exchange format.

Establishment of real-time information will not happen all at once. It needs to be planned by each State and each transportation system in each State that operates the major highways. Information service providers may choose to apply these same data exchange formats to retrieve the information available from the surface transportation systems, process the information, and send it along to the traveling public.

Proposed Concept

On May 4, 2006, the FHWA published a notice in the **Federal Register** (71 FR 26399) outlining some proposed preliminary program parameters and seeking public comments on the proposed description of the Real-time System Management Information Program, including its outcome goals, definitions for various program parameters, and the current status of related activities in the States. The proposed concept described here is based upon the proposed preliminary program parameters.

The RTIP is built around standard data exchange formats based on existing ITS standards. The RTIP will establish a reference of data exchange formats that can be used by State and local agencies as well as information service providers to build interfaces in their systems to exchange the real-time traffic and traveler information. An organization would examine the referenced data exchange formats and implement an interface to their system that supports the formats.

The system would provide the information it has to this interface, not a specific system, in the standard data exchange format. No processing of the information is required, although some manipulation may occur to make the information item compatible with the data exchange format. Figure 1 illustrates the concept of the RTIP. The primary focus of the RTIP is the establishment of data exchange formats to facilitate the exchange of traffic and travel conditions.

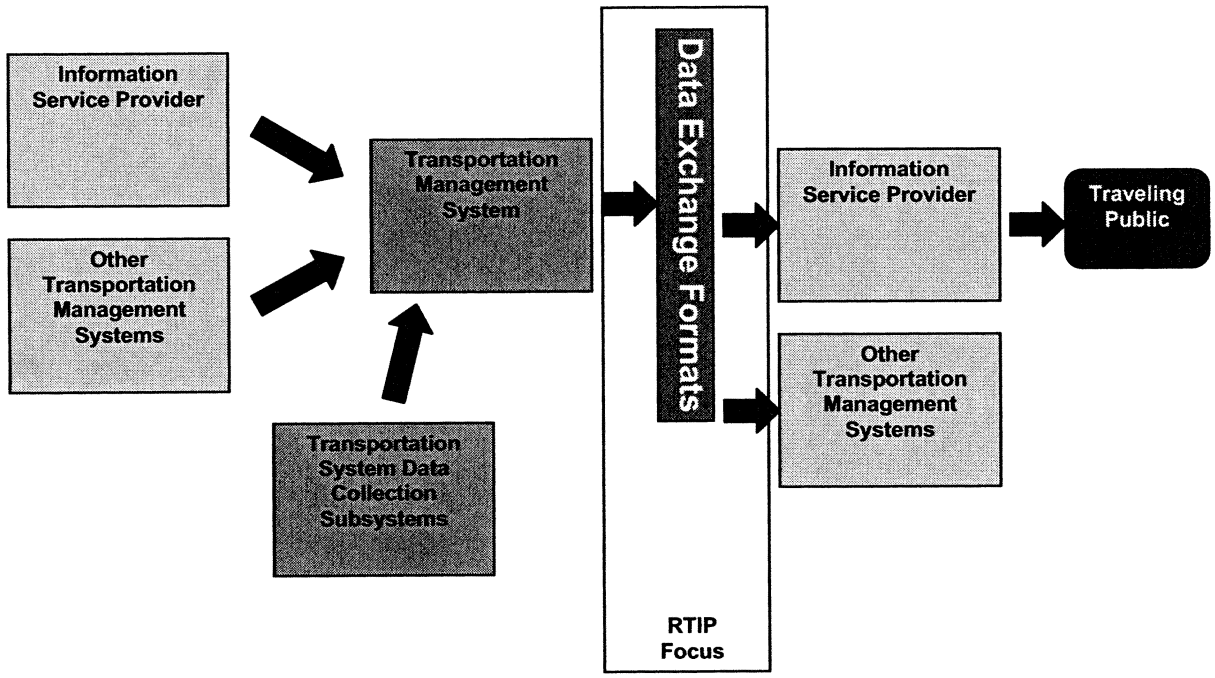

Figure 1 RTIP Concept

Not all systems will have all the data identified by the data exchange formats. That is understood and accepted. The important point of the RTIP is that the data be made available in a manner that minimizes misinterpretation. This will enable another system to retrieve the available information without customizing a format for the data. The RTIP is not requiring the implementation of new data collection systems to meet all of the data exchange formats identified, but it is assumed that over time, more data will become available and it should be provided in the formats established.

Further, the RTIP is concerned with real-time information. It is essentially a stream of data made available to other systems over a center-to-center interface. Even though there are no proposed storage requirements within the scope of the RTIP, it is good practice. Transportation Management Systems, ISPs and the Planning Community will likely gain from applications that make use of the archives of the real-time information.

The information will address real-time traffic and travel conditions that facilitate management, operations, and decision making on the part of transportation system operators and the traveling public. This information should improve the security of the surface transportation system, address congestion problems, support improved response to weather events and surface transportation incidents, and facilitate national and regional highway traveler information.

Operational Scenarios

From a Traffic Management Center Operator's perspective, the RTIP will provide more comprehensive information on the operator's console. Information collected from neighboring systems, in other jurisdictions, such as a freeway management system, may inform the operator that there is an incident in the outbound lanes from the neighboring system. The operator can use this incident information from the neighboring agency to inform freeway service patrols of the issue and to take appropriate response, to place information on Dynamic Message Signs (DMS) to inform travelers on the outbound facilities of the incident, or to implement diversion plans to diffuse the impact.

The Traffic Management Center software interface may be configured to accept and process this external information but the information would be received in a standard data exchange format making it possible to design the interface once for that information no matter where it originated.

From the traveler's perspective, they receive their transportation information from an Information Service Provider (ISP) who collects traffic and travel conditions information from their own as well as external sources such as traffic management centers and transit management centers. The ISP processes the information and makes it available as a service or product to the traveler. The ISP would collect the information from the various sources over an interface using the standard data exchange formats established under the RTIP.

In these instances, the data exchange formats are the constant. This enables agencies to collect from other systems and provide information externally without establishing a different data exchange format with each system interface. This reduces the complexity of each system involved regarding interface definition, implementation, and maintenance. Each organization involved in this scenario can anticipate the types of information that will be received.

The data is real-time and not stored by the source system. It is essentially a data feed. It is likely the subscribing organization would establish the connection to the source, retrieve the information needed, and store any information required for other purposes such as transportation planning or research. In addition, these are information exchanges only. No device control is facilitated or addressed by the RTIP.

Summary of Impacts

The impacts of the RTIP will be the planning for existing system upgrades

for the standard data exchange formats, the update of regional architectures to reflect the data exchange formats and interfaces, and the deployment of those formats for data exchange and the interface they are made available on.

This document contains the high-level specifications for the data exchange formats to support the RTIP. These high-level specifications have been used to identify standards elements that satisfy the needs of the RTIP based on these specifications. The high-level specifications defined in this document bound the scope of the RTIP.

Specifications

The National ITS Architecture was used as a source of information for the Concept of Operations and the functional specifications. The RTIP concept was mapped to the National ITS Architecture definition. The ATIS01-Broadcast Traveler Information Market Package was used to start the mapping process. The interfaces identified were tailored based on the following interface criteria:

- Focus on center-to-center interfaces
- Remove request flows
- Remove control flows
- Include system operation and conditions information
- Include information of operational use to other systems
- Include information of use to travelers
- Remove duplicate flows

The interfaces presented by the National ITS Architecture mapping include:

Traffic Management Information

- Road network conditions
- Road weather information
- Traffic information coordination
- Road network probe information
- Traffic incidents
- Air quality data

Maintenance and Construction Management

- Maintenance and construction work plans
- Roadway maintenance status
- Work zone information

Transit Management Information

- Emergency transit schedule information
- Road network probe information
- Transit and fare schedules
- Transit incident information
- Transit system data

Information Service Provider Information

- Broadcast information
- Road network probe information
- Traveler information
- Emergency traveler information

Parking Information

- Parking locations
- Parking availability

Emergency Management Information

- Evacuation information
- Disaster information

Given the Concept of Operations and the interfaces from the National ITS Architecture as a starting point, the functional specifications associated with each information flow in the National ITS Architecture were examined along with the related process specifications and data flows to generate a tailored set of high-level specifications. These high-level specifications were refined and those refined specifications were used to identify the data exchange formats within the existing ITS Standards that apply to the RTIP. The resulting specifications are provided in the first 3 columns of the Table in Appendix A. In the specifications, the subject system is referred to as the Real-Time Information Program (RTIP). The RTIP can be any system that would be satisfying Section 1201.

Standards Reference

The ultimate goal of this document is to provide a reference between the specifications of the RTIP defined in Section 1201 and the data exchange formats established in the ITS Standards. The table in Appendix A maps the specifications to the messages required to provide the functions in the Real Time Information Program (RTIP). The functional specifications are grouped under broad functionalities of RTIP. The specifications described under the ''General Specifications'' category articulates the methods by which the logical traffic network information in a center-to-center (C2C) communications environment would convey traffic, incident and other information based on the node (a geographic point) and links (road segment between two nodes) in the area.

The messages in the referenced standards (SAE J2354, TMDD, IEEE 1512) are defined in such a way that several different submessages are packaged in a wrapper message. All of the submessages in the wrapper message are defined as an optional element so that a local implementer can use only the submessage(s) which are necessary to support its system's specification. The mapped messages for the specification(s) also indicate which submessage(s) needs to be used.

As an example for implementation, consider the specification and subspecifications of 1.4. A RTIP implementer will need to use the MSG_Public incident description (PID) message from IEEE 1512 Base Standards populated with detour and closures information for sending it to the intended target center. This PID message has the wrapper message named DF_IDX_Wrapper which wraps detour and closure submessage (impactReports) as well as most of the other submessages from IEEE 1512 Base, IEEE 1512.1, IEEE 1512.2 and IEEE 1512.3 standards. But for sending detour and closures information the DF_IDX_Wrapper needs to have only the value of impactReports entry which has detour and closures information while all other submessages can be omitted as they are defined as optional and do not need to be included.

Most of the specifications have messages mapped to them taken from existing standards. A list of specifications for which there is no related message in the existing standards is provided below.

3.4 The RTIP shall provide information about the changes to transit services during an evacuation.

3.6 The RTIP shall provide transit alerts and advisories pertaining to major emergencies or disasters.

The ITS standards referenced in Appendix A feature the following versions. Please note that ITS standards evolve over time, and that there may be a revision to this table in the future:

TMDD—Standards for Traffic Management Center to Center Communications, ITE/AASHTO, Version 2.1, June 1, 2005.

IEEE 1512 Base Standards—IEEE Standard for Common Incident Management Message Sets for Use by Emergency Management Centers, IEEE, Version IEEE Std 1512–2006, June 8, 2006.

IEEE 1512.1—2006—IEEE Standard for Common Incident Management Message Sets for Use by Emergency Management Centers, IEEE, Version IEEE Std 1512.1–2006, November 2, 2006.

SAE J2354—Message Sets for Advanced Traveler Information System (ATIS), SAE, Version SAE J2354, February 2004.

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
	0 General Specifications		
0.1	The RTIP may provide a list of points and segments between any two points that comprise the traffic network (i.e. network topology).	TMDD	Standard: TMDD. Message: 1.14.2—TrafficNetworkInventory.
0.1.1	The RTIP may provide unique identification for all points in the traffic network.	TMDD.	
0.1.2	The RTIP may provide unique identification of all road segments between any two points in the traffic network.	TMDD.	
0.2	The RTIP may provide any change to the traffic network.	TMDD.	
0.2.1	The RTIP may provide any change to the identification of any point in the traffic network.	TMDD.	
0.2.2	The RTIP may provide any change to the identification of any road segment in the traffic network.	TMDD.	
0.3	The RTIP may receive and process information about the network topology.	TMDD	Standard: TMDD. Message: 1.14.1—TrafficNetworkRequest. Message: 1.14.2—TrafficNetworkInventory.
0.3.1	The RTIP may request information about the network topology upon initialization.	TMDD.	
0.3.2	The RTIP may provide information about the network topology upon request.	TMDD.	
	1 Traveler Information		
1.1	The RTIP may provide route segment travel times.	National ITS Architecture	Standard: TMDD. Message: 1.14.9—LinkData.
1.2	The RTIP may provide route segment speeds.	National ITS Architecture	Standard: TMDD. Message: 1.14.9—LinkData.
1.3	The RTIP may provide roadway incident information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_Advisory Information where Response Group has entry for incidents.
1.4	The RTIP may provide roadway detours and closures information.	National ITS Architecture	Standard: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of impact Reports entry.
1.4.1	The RTIP may provide list of road segments as detour information.	National ITS Architecture.	
1.4.2	The RTIP may provide list of road segments that are closed.	National ITS Architecture.	
1.4.3	The RTIP may provide information about the effective time frame as a part of detours and closures information.	National ITS Architecture.	
1.5	The RTIP may provide event information ...	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has suitable entries for the event being described, and the header information and appropriate ITIS codes used to indicate the type of update, as needed. Standard: TMDD. Message ID: 1.3.1—BasicEventUpdate and 1.3.2— FullEventUpdate. Standard: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) using the DF_IDX_Wrapper and the Header/IssueTime information and appropriate ITIS codes used to indicate the type of update, as needed.

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES—Continued

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
1.5.1	The RTIP may provide current roadway event information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has suitable entries for the event being described, and the header information and appropriate ITIS codes used to indicate the type of update, as needed. Standard: TMDD. Message ID: 1.3.1—Basic Event Update and 1.3.2—Full Event Update. Standard: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) using the DF_IDX_Wrapper and the Header/IssueTime information and appropriate ITIS codes used to indicate the type of update, as needed.
1.5.1.1	The RTIP may provide current roadway event information upon request.	National ITS Architecture.	
1.5.1.2	The RTIP may provide updates to the current roadway event information.	National ITS Architecture.	
1.5.1.3	The RTIP may provide the status of the current event information.	National ITS Architecture.	
1.5.2	The RTIP may provide planned event information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has suitable entries for the event being described, and the header information and appropriate ITIS codes used to indicate the type of update, as needed. Standard: TMDD. Message ID: 1.3.1—BasicEventUpdate and 1.3.2— FullEventUpdate. Standard: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) using the DF_IDX_Wrapper and the Header/IssueTime information and appropriate ITIS codes used to indicate the type of update, as needed.
1.5.2.1	The RTIP may provide planned event information upon request.	National ITS Architecture.	
1.5.2.2	The RTIP may provide updates to the planned event information.	National ITS Architecture.	
1.5.2.3	The RTIP may provide the status of the planned event information.	National ITS Architecture.	
1.6	The RTIP may provide alternate routes	National ITS Architecture	Standard: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of impactReports entry.
1.6.1	The RTIP may provide a list of road segments as alternate route.	National ITS Architecture.	
1.7	The RTIP may provide work zone information.	National ITS Architecture	Standard: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of workZoneDataReports entry.
1.7.1	The RTIP may provide list of road segments as work zone.	National ITS Architecture.	
1.7.2	The RTIP may provide the information about the effective time frame when work will be performed in the work zone.	National ITS Architecture.	
1.8	The RTIP may provide information about real-time transit schedule adherence.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for itineraries. Comment: DF_Itinerary contains DF_TransitInstructions which has data related to transit schedule time and also the data related to how many minutes a transit vehicle will be delayed at a stop point or time point in transit system. so from these data we can assume real-time transit schedule adherence.

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES—Continued

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
1.9	The RTIP may provide parking information	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for parkingLots.
1.9.1	The RTIP may provide the location of the parking.	National ITS Architecture.	
1.9.2	The RTIP may provide information about parking availability.	National ITS Architecture.	
1.9.3	The RTIP may provide the information about the location of available parking.	National ITS Architecture.	
1.10	The RTIP may provide weather information	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
1.11	The RTIP may provide environmental conditions information.	National ITS Architecture.	
1.12	The RTIP may provide air quality information.	National ITS Architecture.	
1.13	The RTIP may provide emergency evacuation information.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of evacuationReports entry.
1.13.1	The RTIP may provide information about evacuation zones.	National ITS Architecture.	
1.13.2	The RTIP may provide information about the routes to be used for evacuation.	National ITS Architecture.	
1.13.3	The RTIP may provide information about the effective time frame of the evacuation.	National ITS Architecture.	
1.13.4	The RTIP may provide shelter information during an evacuation.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of facilitiesReports entry.
1.13.4.1	The RTIP may provide information about the location of shelter during an evacuation.	National ITS Architecture.	
1.13.4.2	The RTIP may provide information about the availability of shelter during an evacuation.	National ITS Architecture.	
1.13.4.3	The RTIP may provide information about the location of available shelter during an evacuation.	National ITS Architecture.	
1.13.5	The RTIP may provide available transportation modes during an evacuation.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3–MSG_Public incident description (PID) where DF_IDX_Wrapper has value of evacuationReports entry.
1.13.6	The RTIP may provide information about the changes to transit services during an evacuation.	National ITS Architecture	It is expected that this specifications will be met in the next version of SAE J2354.
1.13.6.1	The RTIP may provide deviations from the route of regular transit services during an evacuation.	National ITS Architecture.	
1.13.6.2	The RTIP may provide deviations from the schedule of regular transit services during an evacuation.	National ITS Architecture.	
1.13.7	The RTIP may provide traffic conditions information during an evacuation.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for links.
1.13.8	The RTIP may provide road condition information during an evacuation.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
1.13.8.1	The RTIP may provide information about pavement condition during an evacuation.	National ITS Architecture.	
1.13.8.2	The RTIP may provide roadway temperature information during an evacuation.	National ITS Architecture.	
1.13.8.3	The RTIP may provide information about the precipitation during an evacuation.	National ITS Architecture.	

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES—Continued

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
1.13.8.4	The RTIP may provide information about the treatment or plowing of snow during an evacuation.	National ITS Architecture.	
1.14	The RTIP may provide disaster (e.g. natural, man-made) information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for events.
1.14.1	The RTIP may provide information about the type (natural, man-made) of disaster.	National ITS Architecture.	
1.14.2	The RTIP may provide information about the originator of the disaster.	National ITS Architecture.	
1.14.3	The RTIP may provide information about the geographical area affected by the disaster.	National ITS Architecture.	
1.14.4	The RTIP may provide information about the effective time frame of the disaster.	National ITS Architecture.	
1.14.5	The RTIP may provide the information and instructions necessary for the public to respond to the disaster.	National ITS Architecture.	
	2 Traffic Management		
2.1	The RTIP may distribute road network conditions data (raw or processed) based on collected and analyzed traffic data.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entries for links, weatherReports, incidents and events. Standards: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of workZoneDataReports entry. Standard: IEEE 1512.1—2006. Message Name: 6.2—MSG_ClearOrRepairPlan [IM], 6.4–MSG_InfrastructureReport[IM].
2.1.1	The RTIP may provide current traffic conditions.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for links.
2.1.2	The RTIP may provide current road conditions.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
2.1.2.1	The RTIP may provide current pavement condition information.	National ITS Architecture.	
2.1.2.2	The RTIP may provide roadway temperature information.	National ITS Architecture.	
2.1.2.3	The RTIP may provide current precipitation information.	National ITS Architecture.	
2.1.2.4	The RTIP may provide current roadway treatment or snow removal operations.	National ITS Architecture.	
2.1.3	The RTIP may provide forecasted traffic conditions.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for links.
2.1.4	The RTIP may provide forecasted road conditions.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
2.1.4.1	The RTIP may provide forecasted pavement condition information.	National ITS Architecture.	
2.1.4.2	The RTIP may provide forecasted roadway temperature information.	National ITS Architecture.	
2.1.4.3	The RTIP may provide forecasted precipitation information.	National ITS Architecture.	
2.1.4.4	The RTIP may provide forecasted roadway treatment or snow removal operations.	National ITS Architecture.	
2.1.5	The RTIP may provide incident information	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for incidents.

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES—Continued

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
2.1.6	The RTIP may provide information about a disaster (e.g. natural, man-made).	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for events.
2.1.6.1	The RTIP may provide information about the type (natural, man-made) of disaster.	National ITS Architecture.	
2.1.6.2	The RTIP may provide information about the originator of the disaster information.	National ITS Architecture.	
2.1.6.3	The RTIP may provide information about the geographical area affected by the disaster.	National ITS Architecture.	
2.1.6.4	The RTIP may provide information about the effective time frame of the disaster.	National ITS Architecture.	
2.1.6.5	The RTIP may provide the information and instructions necessary for the public to respond to the disaster.	National ITS Architecture.	
2.1.7	The RTIP may provide information about damage to the road network.	National ITS Architecture	Standards: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of workZoneDataReports entry. Standard: IEEE 1512.1—2006. Message Name: 6.2—MSG_ClearOrRepairPlan [IM], 6.4—MSG_InfrastructureReport[IM].
2.1.7.1	The RTIP may provide information about the severity of road network damage.	National ITS Architecture.	
2.1.7.2	The RTIP may provide information about the remaining capacity of a damaged road network.	National ITS Architecture.	
2.1.7.3	The RTIP may provide information about the required closures of a damaged road network.	National ITS Architecture.	
2.1.7.4	The RTIP may provide information about alternate routes in case of a damaged road network.	National ITS Architecture.	
2.1.7.5	The RTIP may provide information about the necessary restrictions of a damaged road network.	National ITS Architecture.	
2.1.7.6	The RTIP may provide information about the time frame for repair and recovery of a damaged road network.	National ITS Architecture.	
2.1.8	The RTIP may provide road weather information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
2.1.9	The RTIP may provide environmental conditions information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
2.2	The RTIP may provide information about the execution of an evacuation strategy.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of evacuationReports entry.
2.2.1	The RTIP may provide information on the zones to be evacuated.	National ITS Architecture.	
2.2.2	The RTIP may provide information on the setting of the closures and detours of routes.	National ITS Architecture.	
2.2.2.1	The RTIP may provide information on the routes that will be closed during the evacuation.	National ITS Architecture.	
2.2.2.2	The RTIP may provide information on the routes that will be used as detour during the evacuation.	National ITS Architecture.	
2.2.3	The RTIP may provide information on the effective time frame for the evacuation.	National ITS Architecture.	

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES—Continued

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
	3 Transit Management		
3.1	The RTIP may provide transit incident information along with other service data.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has values of transitEventSourceReports and transitVehicleInvolvedReports entries.
3.2	The RTIP may provide information about real-time transit schedule adherence.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for itineraries.
3.3	The RTIP may provide information about weather conditions observed within the transit system.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
3.4	The RTIP may provide information about changes to transit service due to special events.	National ITS Architecture	It is expected that this specifications will be met in the next version of SAE J2354.
3.4.1	The RTIP may provide deviations from the schedule of regular transit services due to special events.	National ITS Architecture.	
3.4.2	The RTIP may provide deviations from the routes of regular transit services due to special events.	National ITS Architecture.	
3.5	The RTIP may provide real-time arrival information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for itineraries. Comment: DF_Itinerary contains DF_TransitInstructions which has data related to transit schedule time and also the data related to how many minutes a transit vehicle will be delayed at a stop point or time point in transit system. so from these data we can assume real-time transit arrival information.
3.6	The RTIP may provide transit alerts and advisories pertaining to major emergencies or disasters.	National ITS Architecture	It is expected that this specifications will be met in the next version of SAE J2354.
	4 Maintenance and Construction Management		
4.1	The RTIP may provide work zone information.	National ITS Architecture	Standards: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of workZoneDataReports entry.
4.1.1	The RTIP may provide list of road segments as work zone.	National ITS Architecture.	
4.1.2	The RTIP may provide the information about the effective time frame when work will be performed in the work zone.	National ITS Architecture.	
4.2	The RTIP may provide information about damage to the road network.	National ITS Architecture	Standards: IEEE 1512 Base Standards. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of workZoneDataReports entry. Standard: IEEE 1512.1—2006. Message Name: 6.2—MSG_ClearOrRepairPlan[IM] 6.4—MSG_Infrastructure Report[IM].
4.2.1	The RTIP may provide information about the severity of road network damage.	National ITS Architecture.	
4.2.2	The RTIP may provide information about the remaining capacity of a damaged road network.	National ITS Architecture.	
4.2.3	The RTIP may provide information about the required closures of a damaged road network.	National ITS Architecture.	
4.2.4	The RTIP may provide information about alternate routes in case of a damaged road network.	National ITS Architecture.	

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES—Continued

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
4.2.5	The RTIP may provide information about the necessary restrictions of a damaged road network.	National ITS Architecture.	
4.2.6	The RTIP may provide information about the time frame for repair and recovery of a damaged road network.	National ITS Architecture.	
	5 Parking Management		
5.1	The RTIP may provide parking information	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for parkingLots.
5.1.1	The RTIP may provide the location of the parking.	National ITS Architecture.	
5.1.2	The RTIP may provide information about parking availability.	National ITS Architecture.	
5.1.3	The RTIP may provide the information about the location of available parking.	National ITS Architecture.	
	6 Emergency Management		
6.1	The RTIP may provide emergency evacuation information.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has values of evacuationReports and facilitiesReports entries. Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entries for links, weatherReports and events.
6.1.1	The RTIP may provide information about evacuation zones.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of evacuationReports entry.
6.1.2	The RTIP may provide information about the routes to be used for evacuation.	National ITS Architecture.	
6.1.3	The RTIP may provide information about the effective time frame of the evacuation.	National ITS Architecture.	
6.1.4	The RTIP may provide shelter information during an evacuation.	National ITS Architecture	Standard: IEEE 1512 Base standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of facilitiesReports entry.
6.1.4.1	The RTIP may provide information about the location of shelter during an evacuation.	National ITS Architecture.	
6.1.4.2	The RTIP may provide information about the availability of shelter during an evacuation.	National ITS Architecture.	
6.1.4.3	The RTIP may provide information about the location of available shelter during an evacuation.	National ITS Architecture.	
6.1.5	The RTIP may provide available transportation modes during an evacuation.	National ITS Architecture	Standard: IEEE 1512 Base Standard. Message: 6.3—MSG_Public incident description (PID) where DF_IDX_Wrapper has value of evacuationReports entry.
6.1.6	The RTIP may provide information about the changes to transit services during an evacuation.	National ITS Architecture	It is expected that this specifications will be met in the next version of SAE J2354.
6.1.6.1	The RTIP may provide deviations from the route of regular transit services during an evacuation.	National ITS Architecture.	
6.1.6.2	The RTIP may provide deviations from the schedule of regular transit services during an evacuation.	National ITS Architecture.	
6.1.7	The RTIP may provide traffic conditions information during an evacuation.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for links.

RTIP SPECIFICATIONS MAPPED TO STANDARDS DIALOGS AND MESSAGES—Continued

Req. No.	Functional specification description	Source	Dialog(s)/message(s)
6.1.8	The RTIP may provide road condition information during an evacuation.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for weatherReports.
6.1.8.1	The RTIP may provide information about pavement condition during an evacuation.	National ITS Architecture.	
6.1.8.2	The RTIP may provide roadway temperature information during an evacuation.	National ITS Architecture.	
6.1.8.3	The RTIP may provide information about the precipitation during an evacuation.	National ITS Architecture.	
6.1.8.4	The RTIP may provide information about the treatment or plowing of snow during an evacuation.	National ITS Architecture.	
6.2	The RTIP may provide disaster (e.g. natural, man-made) information.	National ITS Architecture	Standard: SAE J2354. Dialog: One-way Traveler Information. Message: 5.4—MSG_AdvisoryInformation where ResponseGroup has entry for events.
6.2.1	The RTIP may provide information about the type (natural, man-made) of disaster.	National ITS Architecture.	
6.2.2	The RTIP may provide information about the originator of the disaster.	National ITS Architecture.	
6.2.3	The RTIP may provide information about the geographical area affected by the disaster.	National ITS Architecture.	
6.2.4	The RTIP may provide information about the effective time frame of the disaster.	National ITS Architecture.	
6.2.5	The RTIP may provide the information and instructions necessary for the public to respond to the disaster.	National ITS Architecture.	

[FR Doc. E7–20273 Filed 10–12–07; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5578, FMCSA–99–6480, FMCSA–00–7363, FMCSA–01–9561, FMCSA–03–15892]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 30, 2007. Comments must be received on or before November 14, 2007.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Numbers FMCSA–99–5578, FMCSA–99–6480, FMCSA–00–7363, FMCSA–01–9561, FMCSA–03–15892, using any of the following methods.

- *DOT Web site: http://dmses.dot.gov.* Follow the on-line instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Each submission must include the Agency name and docket numbers for this Notice. Note that DOT posts all comments received without change to *http://dms.dot.gov,* including any personal information included. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA,

Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Lauren C. Allen
Tracey A. Ammons
Randy B. Combs
Robert L. Cross, Jr.
James D. Davis
Edward J. Genovese
Dewayne E. Harms
Mark D. Kraft
David F. LeClerc
Charles L. Lovern
Jimmy R. Millage
Carson E. Rohrbaugh
Robert E. Sanders
Donald J. Snider
John A. Sortman
Jesse L. Townsend
James A. Welch
Edward W. Yeates, Jr.
Michael E. Yount

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 54775; 70 FR 61165; 64 FR 68195; 65 FR 20251; 67 FR 17102; 65 FR 45817; 65 FR 77066; 68 FR 1654; 66 FR 30502; 66 FR 41654; 68 FR 52811; 68 FR 61860). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 14, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: October 5, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–20204 Filed 10–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2007–27801]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt fifty-two individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective October 15, 2007. The exemptions expire on October 15, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://Docketinfo.dot.gov*.

Background

On August 14, 2007, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifty-two individuals, and requested comments from the public (72 FR 45481). The public comment period closed on September 13, 2007 and five comments were received.

FMCSA has evaluated the eligibility of the fifty-two applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifty-two applicants have had ITDM over a range of 1 to 39 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 14, 2007, **Federal Register** Notice (72 FR 45481). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received five comments in this proceeding. All five comments were recommendations in favor of granting the Federal diabetes exemption to Mr. Scott M. Aitcheson, Mr. Larry G. Becker, Mr. Stacy M. McCroskey, and Mr. Mark A. Jones.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the fifty-two exemption applications, FMCSA exempts, Scott M. Aitcheson, Arnulfo Amador, Larry G. Becker, Alan R. Buck, Frederick J. Caldarelli, III, Eddie A. Camacho, Richard W. Clark, William N. Climer, William J. Compton, Brian R. Current, Andrew J. Corrao, Jr., Edward W. Crean, Todd J. Donnelly, Mark A. Davis, Tate D. Eakin, Anthony Espinosa, Gary L. Everett, Carmine J. Fossile, Steve A. Ging, Jeffrey M. Halavanja, James K. Hay, Vincent D. Hoagland, Jr., James M. Holland, Matthew S. Hooker, Gregory A. Iverson, Bradley M. Johnson, Michael A. Johnson, Mark A. Jones, Michael J.

Keating, Duane E. Koomen, Bruce A. Larson, Curtis W. Mahler, Hector Martinez, Stacy M. McCroskey, Harold W. McCullough, Bruce L. Mitchell, Thomas L. Nesbit, Michael D. O'Brien, Charles A. Parker, Jeremy K. Redger, Michael C. Sapp, Norma L. Shoop, Chris W. Smaltz, Rodney C. Thompson, Glen E. Townsend, Randy E. Veit, Edwin C. Whitcomb, James B. Wilson, Daniel M. Winn, Steven D. Workman, Derek J. Wright, and Donald W. Yeager from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: October 5, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–20206 Filed 10–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–29019]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 27 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before November 14, 2007.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2007–29019 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 27 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Christopher L. Bagby

Mr. Bagby, age 42, has loss of vision in his right eye due to a misplaced pupil and cataract as a result of a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/1200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''Chris currently wears glasses and should continue to do so for driving. Other than that, I do not recommend any limitations on him for driving standard or commercial vehicles.'' Mr. Bagby reported that he has driven straight trucks for 7 years, accumulating 182,000 miles, and tractor-trailer combinations for 4 years, accumulating 99,840 miles. He holds a Class A Commercial Driver's License (CDL) from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert W. Bequeaith

Mr. Bequeaith, 56, has loss of vision in his left eye due to a retinal detachment as a result of a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/16 and in the left, 20/150. Following an examination in 2007, his optometrist noted, ''My impression is that Mr. Bequeaith has the visual ability to safely continue operating a commercial vehicle.'' Mr. Bequeaith reported that he has driven straight trucks for 3 years, accumulating 30,000 miles, and tractor-trailer combinations for 37 years, accumulating 3.6 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William R. Braun

Mr. Braun, 60, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Braun has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Braun reported that he has driven buses for 4 years, accumulating 96,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lloyd K. Brown

Mr. Brown, 68, has a prosthetic left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, he has stable sufficient vision to continue operating a CMV.'' Mr. Brown reported that he has driven straight trucks for 6 years, accumulating 3,300 miles, tractor-trailer combinations for 3½ years, accumulating 87,500 miles, and buses for 6 years, accumulating 79,200 miles. He holds a Class B CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kecia D. Clark-Welch

Ms. Clark-Welch, 42, has had amblyopia in her right eye since birth. The best corrected visual acuity in her right eye is 20/60 and in the left, 20/20. Following an examination in 2007, her ophthalmologist noted, ''Vision is sufficient to operate a commercial vehicle.'' Ms. Clark-Welch reported that she has driven tractor-trailer combinations for 9 years, accumulating 151,200 miles. She holds a Class A CDL from North Carolina. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Earl S. Cooper

Mr. Cooper, 60, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in the left, 20/200. Following an examination in 2007, his optometrist noted, ''Mr. Cooper, in my medical opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle, as he has done for many years.'' Mr. Cooper reported that he has driven straight trucks for 30 years, accumulating 600,000 miles, and tractor-trailer combinations for 35 years, accumulating 1.9 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tommy R. Crouse

Mr. Crouse, 43, has a macular scar as a result of a traumatic injury sustained in 2003. The visual acuity in his right eye is count-finger-vision and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''Mr. Crouse should have no trouble performing the visual tasks required to drive a commercial vehicle.'' Mr. Crouse reported that he has driven straight trucks for 2 years, accumulating 150,000 miles, and tractor-trailer combinations for 8 years, accumulating 800,000 miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ben W. Davis

Mr. Davis, 58, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''This patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle in my professional opinion.'' Mr. Davis reported that he has driven straight trucks for 19 years, accumulating 114,000 miles, and buses for 30 years, accumulating 60,000 miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles A. DeKnikker, Sr.

Mr. DeKnikker, 54, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''I have seen Charles as a patient for over ten years and his correction and visual status is stable and has not changed. Therefore his vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. DeKnikker reported that he has driven straight trucks for 35 years, accumulating 2.7 million miles, and tractor-trailer combinations for 19 years, accumulating 988,000 miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Everett E. Denny

Mr. Denny, 49, has complete loss of vision in his left eye due to aphakia and glaucoma as a result of a traumatic injury sustained as a child. The visual acuity in his right eye is 20/15. Following an examination in 2007, his optometrist noted, ''His vision and field of vision in the right eye remains excellent and is more than adequate to operate a commercial vehicle.'' Mr. Denny reported that he has driven straight trucks for 23 years, accumulating 1.4 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 10 mph.

Nigel L. Farmer

Mr. Farmer, 45, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''I certify that in my medical opinion, Mr. Farmer has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Farmer reported that he has driven straight trucks for 24 years, accumulating 792,000 miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Earl M. Frederick, Jr.

Mr. Frederick, 45, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''You will note that the patient has adequate color vision, horizontal vision and his left visual acuity is 20/20, which should enable him to receive his commercial driver's license without problem.'' Mr. Frederick reported that he has driven straight trucks for 23 years, accumulating 460,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lorne H. Geiken

Mr. Geiken, 36, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, I feel Lorne has a stable visual system and should have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Geiken reported that he has driven tractor-trailer combinations for 5 years, accumulating 625,000 miles. He holds a

Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John E. Halcomb

Mr. Halcomb, 40, had his right eye enucleated due to corneal damage sustained as a child. The visual acuity in his left eye is 20/20. Following an examination in 2006, his optometrist noted, ''I certify that in my medical opinion, Mr. Halcomb has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Halcomb reported that he has driven straight trucks for 3 years, accumulating 15,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.8 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael A. Hershberger

Mr. Hershberger, 50, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''Based on these findings, it is my opinion that Michael Hershberger has sufficient vision to perform the tasks required to operate a commercial vehicle.'' Mr. Hershberger reported that he has driven straight trucks for 5 years, accumulating 200,000 miles, and tractor-trailer combinations for 25 years, accumulating 2 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Patrick J. Hogan, Jr.

Mr. Hogan, 36, had his right eye enucleated due to a retinoblastoma that required removal of the eye when he was a child. The visual acuity in his left eye is 20/20. Following an examination in 2007, his optometrist noted, ''Based on today's examination, in my medical opinion, Mr. Hogan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hogan reported that he has driven straight trucks for 12 years, accumulating 144,000 miles. He holds a Class A CDL from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald W. Holt

Mr. Holt, 56, has loss of vision in his left eye due to scotoma since 1983. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his optometrist noted, ''In my medical opinion, patient has enough and sufficient vision to operate a commercial vehicle.'' Mr. Holt reported that he has driven straight trucks for 12 years, accumulating 960,000 miles. He holds a Class D operator's license from Massachusetts. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 16 mph.

Judy L. Marshall

Ms. Marshall, 43, has had amblyopia in her left eye since childhood. The visual acuity in her right eye is 20/20 and in the left, 20/400. Following an examination in 2007, her optometrist noted, ''Patient has sufficient vision to operate commercial vehicle.'' Ms. Marshall reported that she has driven straight trucks for 3 years, accumulating 105,000 miles, and tractor-trailer combinations for 3 years, accumulating 105,000 miles. She holds a Class D operator's license from South Carolina. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark A. Massengill

Mr. Massengill, 49, has loss of vision in his right eye due to retinal scarring as a result of a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''It is my distinct and unequivocal opinion that Mr. Massengill has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Massengill reported that he has driven straight trucks for 30 years, accumulating 3.9 million miles, and tractor-trailer combinations for 30 years, accumulating 3.9 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Todd A. McBrain

Mr. McBrain, 40, has loss of vision in his left eye due to a cataract as a result of a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his ophthalmologist noted, ''Yes, Mr. McBrain has sufficient vision to perform the driving task to operate a commercial vehicle.'' Mr. McBrain reported that he has driven straight trucks for 8 years, accumulating 4,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Amilton T. Monteiro

Mr. Monteiro, 26, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, Mr. Monteiro has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Monteiro reported that he has driven straight trucks for 7 years, accumulating 280,000 miles. He holds a Class D operator's license from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dennis D. Moore

Mr. Moore, 55, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/300. Following an examination in 2007, his ophthalmologist noted, ''I certify that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle in my medical opinion.'' Mr. Moore reported that he has driven straight trucks for 30 years, accumulating 270,000 miles, and tractor-trailer combinations for 30 years, accumulating 2.9 million miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David G. Oakley

Mr. Oakley, 47, has amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''It is in my professional opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Oakley reported that he has driven straight trucks for 5 years, accumulating 200,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John S. Olsen

Mr. Olsen, 57, has loss of vision in his right eye due to a birth defect. The visual acuity in his right eye is 20/200

and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''After examining Mr. Olsen it is my professional impression that he has sufficient functional vision to drive a commercial vehicle.'' Mr. Olsen reported that he has driven straight trucks for 42 years, accumulating 420,000 miles, tractor-trailer combinations for 42 years, accumulating 420,000 miles, and buses for 42 years, accumulating 21,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas J. Prusik

Mr. Prusik, 60, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''With the left eye's VA of 20/20 uncorrected/corrected at distance, patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Prusik reported that he has driven straight trucks for 41½ years, accumulating 311,250 miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Glen W. Sterling

Mr. Sterling, 42, has loss of vision in his right eye due to a macular scar as a result of a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his optometrist noted, ''In my medical opinion, Mr. Sterling has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sterling reported that he has driven straight trucks for 5 years, accumulating 25,000 miles, and tractor-trailer combinations for 4 years, accumulating 60,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Calvin D. Tubergen

Mr. Tubergen, 59, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''In my medical opinion, Calvin's deficiency in his right eye is stable and not progressive; and that he has sufficient vision to perform the tasks required to operate a commercial vehicle.'' Mr. Tubergen reported that he has driven tractor-trailer combinations for 7 years, accumulating 280,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and two convictions for moving violations, one for failure to obey a traffic signal, and one for speeding in a CMV. He exceeded the speed limit by 10 mph.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business November 14, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: October 5, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–20208 Filed 10–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Announcement of Project Selections.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects to be funded under Fiscal Year (FY) 2007 appropriations for the Alternative Transportation in Parks and Public Lands (ATPPL) program, authorized by Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA–LU) and codified in 49 U.S.C. 5320. The ATPPL program funds capital and planning expenses for alternative transportation systems in parks and public lands. Federal land management agencies and State, tribal and local governments acting with the consent of a Federal land management agency are eligible recipients.

FOR FURTHER INFORMATION CONTACT: Project sponsors who are State, local, or tribal entities may contact the appropriate FTA Regional Administrator (See Appendix A) for grant-specific issues. Project sponsors who are a Federal land management agency or a specific unit of a Federal land management agency should work with the contact listed below at their headquarters office to coordinate the availability of funds to that unit.

- Bureau of Land Management: Linda Force, *Linda_Force@blm.gov*, 202–557–3567.
- Fish and Wildlife Service: Nathan Caldwell, *nathan_caldwell@fws.gov*, 703–358–2376.
- Forest Service: Ellen LaFayette, *elafayette@fs.fed.us*, 703–605–4509.
- National Park Service: Kevin Percival, *Kevin_Percival@nps.gov*, 303–969–2429.

For general information about the Alternative Transportation in the Parks and Public Lands program, please contact Scott Faulk, Office of Program Management, Federal Transit Administration, *scott.faulk@fdot.gov*, 202–366–1660.

SUPPLEMENTARY INFORMATION: A total of $23,000,000 was appropriated for FTA's ATPPL program in FY 2007. Of this amount, a maximum of $20,596,500 was available for project awards; $115,000 was reserved for oversight activities; and up to $2,300,000 was available for planning, research, and technical assistance. A total of 81 applicants requested $55 million, more than twice the amount available for projects, indicating strong competition for funds. An interagency technical review committee evaluated the project proposals based on the criteria defined in 49 U.S.C. 5320(g)(2). Then, as specified in Section 5320(g), the Secretary of the Interior's designee determined the final selection of projects after consultation with and in cooperation with the Secretary of Transportation's designee. For FY 2007, the program will fund 46 projects totaling $19,788,840.

The goals of the program are to conserve natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities through alternative transportation projects. The projects selected for funding in FY 2007 represent a diverse

set of capital and planning projects across the country, ranging from bus purchases to a ferry dock.

FY2007 ATPPL PROJECT SELECTION

State	Land unit/agency	Project description	Project type	Funding recipient	Amount ($)
AK	Glacier Bay NP and Preserve/National Park Service.	Replace the existing Gustavus passenger and freight dock.	Boat/Ferry/Dock	Direct Grant to Alaska Department of Transportation (D2007–ATPL–001).	$3,000,000
AK	Tongass National Forest/United States Forest Service.	Design, procure, and implement an Intelligent Transportation System (ITS).	Other	Interagency Agreement with United States Forest Service.	500,000
AZ	Grand Canyon National Park/National Park Service.	Implement an ITS that promotes transit use and reduced congestion.	Other	Interagency Agreement with National Park Service.	193,000
AZ	Coronado National Forest, Santa Catalina Ranger District, Sabino Canyon Recreation Area/United States Forest Service.	Fund a transportation analysis and feasibility study.	Planning	Interagency Agreement with United States Forest Service.	180,000
CA	Muir Woods National Monument of the Golden Gate National Recreation Area/National Park Service.	Lease ten clean fuel shuttle buses for Muir Woods shuttle service and improve the Muir Woods Centennial transit stop.	Bus	Interagency Agreement with National Park Service.	492,500
CA	Sequoia and Kings Canyon National Parks/National Park Service.	Lease five 30′ shuttle buses for the Giant Forest Shuttle System in Sequoia National Park.	Bus	Interagency Agreement with National Park Service.	225,000
CA	Inyo National Forest Devils Postpile National Monument/United States Forest Service and National Park Service.	Capital cost of leasing ten buses for the Red Meadows-Devils Postpile transit system Funds also to be used for visitor information on the transit system.	Bus	Interagency Agreement with United States Forest Service.	100,000
CA	Yosemite National Park/National Park Service.	Lease Yosemite Area Regional Transportation System (YARTS) Vehicles.	Bus	Interagency Agreement with National Park Service.	264,600
CA	Yosemite National Park/National Park Service.	Complete park wide Integrated Transportation Capacity Assessment.	Planning	Interagency Agreement with National Park Service.	621,600
CA	Golden Gate National Recreation Area/National Park Service.	Prepare operational plan for the Fort Baker Shuttle.	Planning	Interagency Agreement with National Park Service.	70,000
CA	San Francisco Maritime National Historical Park, Golden Gate National Recreation Area/National Park Service.	Prepare Environmental Impact Statement for the extension of the San Francisco Municipal Railway Historic Streetcar Route/Line.	Planning	Interagency Agreement with National Park Service.	493,000
CO	The Maroon Bells—Snowmass Wilderness Area, White River National Forest/United States Forest Service.	Purchase 2 hybrid electric low-floor buses and advance ITS technology initiatives to make transit within Maroon Bells, Snowmass Wilderness Area, and White River National Forest more efficient and user-friendly.	Bus	Direct Grant to Roaring Fork Alternative Transportation Authority (D2007–ATPL–002).	1,300,000
CO	U.S. Fish and Wildlife Service Rocky Mountain/Fish and Wildlife Service.	Bus acquisition to facilitate alternative transportation within Rocky Mountain Arsenal National Wildlife Refuge.	Bus	Interagency Agreement with Fish and Wildlife Service.	171,720
CO	Rocky Mountain National Park/National Park Service.	Model the effects of alternative transportation on resource protection and visitor experience in Rocky Mountain National Park.	Planning	Interagency Agreement with National Park Service.	298,817

FY2007 ATPPL PROJECT SELECTION—Continued

State	Land unit/agency	Project description	Project type	Funding recipient	Amount ($)
FL	Gulf Islands National Seashore/National Park Service.	Fund the Fort Pickens/ Gateway Community Alternative Transportation Plan.	Planning	Interagency Agreement with National Park Service.	250,000
MA	Cape Cod National Seashore/National Park Service.	Purchase five 30′ low-floor mini-buses.	Vehicle replacement	Interagency Agreement with National Park Service.	1,850,000
MA	Cape Cod National Seashore/National Park Service.	Purchase a tram to facilitate alternative transportation.	Tram/Trolley	Interagency Agreement with National Park Service.	450,000
MA	Lowell National Historic Park/National Park Service.	Fund maintenance and safety improvements to the existing 1.5-mile trolley system.	Tram/Trolley	Interagency Agreement with National Park Service.	409,650
MA	Monomoy National Wildlife Refuge, Cape Cod National Seashore/National Park Service and Fish and Wildlife Service.	Fund a planning study that focuses on the expansion of alternative transportation in Outer and Lower Cape Cod.	Planning	Interagency Agreement with Fish and Wildlife Service.	100,000
MA	Cape Cod National Seashore/National Park Service.	Fund a study that develops an integrated parking and transit plan.	Planning	Interagency Agreement with National Park Service.	250,000
MA	Boston Harbor Islands National Recreation Area/ National Park Service.	Rehabilitate the Ferry Hub Pier at Georges Island.	Planning	Interagency Agreement with National Park Service.	100,000
MD	Fort McHenry National Monument and Historic Site/National Park Service.	Reconfigure a transit vehicle node, which will provide a safe visitor access point to the park.	Other	Interagency Agreement with National Park Service.	292,500
MD	Fort McHenry National Monument and Historic Site/National Park Service.	Conduct a feasibility study to evaluate a circular trolley/transit system connecting Baltimore's Inner Harbor with Fort McHenry National Park.	Planning	Interagency Agreement with National Park Service.	72,000
MD etc	Multiple Wildlife Refuges in Northeast (Region 5)/Fish and Wildlife Service.	Research and design of a low environmental impact tram.	Planning	Interagency Agreement with Fish and Wildlife Service.	248,000
MD/VA	Chincoteague National Wildlife Refuge, Assateague Island National Seashore/Fish and Wildlife Service and National Park Service.	Conduct a comprehensive transportation planning study.	Planning	Interagency Agreement with Fish and Wildlife Service.	270,000
ME	Acadia National Park/National Park Service.	Purchase six propane buses.	Vehicle replacement	Direct Grant to Maine Department of Transportation (D2007–ATPL–003).	1,096,500
ME	Acadia National Park/National Park Service.	Fund a study that evaluates existing conditions at all bus stops within Acadia National Park, and identify alternative designs and strategies to improve bus stops that pose a risk to visitor safety.	Planning	Interagency Agreement with National Park Service.	80,000
MI	Hiawatha National Forest—Alger County Public Transit/United States Forest Service.	Replace a passenger ferry, purchase a tour bus, rehabilitate a ferry dock, and construct a terminal facility.	Bus	Interagency Agreement with United States Forest Service.	575,000
MT	Glacier National Park and Blackfeet Indian Reservation/National Park Service.	Purchase transit vehicles for Glacier National Park Transit System.	Bus	Interagency Agreement with National Park Service.	1,200,000
NJ	Sandy Hook Unit of Gateway National Recreation Area/National Park Service.	Fund feasibility study on upgrading the Sandy Hook National Park's shuttle bus service.	Planning	Interagency Agreement with National Park Service.	50,000

FY2007 ATPPL PROJECT SELECTION—Continued

State	Land unit/agency	Project description	Project type	Funding recipient	Amount ($)
NV	Humboldt-Toiyabe National Forest/Spring Mountain National Recreation Area/ United States Forest Service.	Fund a pilot ski season shuttle project and provide operational data for bus service between Las Vegas and the Las Vegas Ski and Snowboard Resort.	Bus	Interagency Agreement with United States Forest Service.	168,300
NY	Roosevelt-Vanderbilt National Historic Site/National Park Service.	Fund a multi-year, seasonal field test at Roosevelt-Vanderbilt National Historic Site.	Bus	Interagency Agreement with National Park Service.	226,800
NY	Fire Island National Seashore/National Park Service.	Redesign and construct a ferry terminal/visitor transportation center.	Boat/Ferry/Dock	Interagency Agreement with National Park Service.	200,000
OH	Cuyahoga Valley National Park/National Park Service.	Upgrade Rockside Railroad Boarding Station Area.	Planning	Interagency Agreement with National Park Service.	187,000
OR	Lewis and Clark National Historical Park/National Park Service.	Fund shuttle bus leasing from Sunset Empire Transit District.	Bus	Interagency Agreement with National Park Service.	43,000
PA	Gettysburg National Military Park; Eisenhower National Historic Site and the Soldiers National Cemetery/National Park Service.	Procure three trolleys and construct eight bus stops.	Bus	Direct Grant to Adams County Transit Authority (D2007–ATPL–004).	787,353
PA	Valley Forge National Historical Park/National Park Service.	Fund a pilot shuttle bus program at Valley Forge National Historical Park.	Planning	Interagency Agreement with National Park Service.	168,000
TN	Kennesaw Mountain National Battlefield Park/National Park Service.	Conduct a technical review of Kennesaw Mountain National Battlefield Park shuttle bus service.	Planning	Interagency Agreement with National Park Service.	25,000
TX	Lower Rio Grande Valley National Wildlife Refuge.	Purchase 10 transit vehicles to facilitate ecotourism at Texas parks, wildlife refuges, and the World Birding Center.	Tram/Trolley	Interagency Agreement with Fish and Wildlife Service.	400,000
UT	Bureau of Land Management Moab Field Office, Arches National Park/Bureau of Land Management and National Park Service.	Construct transit hub to be located on the north end of Moab near the banks of the Colorado River.	Other	Direct Grant to Grand County, Utah (D2007–ATPL–005).	774,000
UT	Zion National Park/National Park Service.	Expansion of the Zion shuttle system's Visitor Center shuttle bus stop.	Other	Interagency Agreement with National Park Service.	151,500
UT	Wasatch-Cache National Forest, Salt Lake Ranger District/United States Forest Service.	Fund a transportation feasibility study for the Salt Lake City Tri-Canyons, Albion Basin area.	Planning	Interagency Agreement with United States Forest Service.	204,000
UT	Zion National Park/National Park Service.	Fund Zion National Park Shuttle Service Planning Study.	Planning	Interagency Agreement with National Park Service.	150,000
VA	Colonial National Park/National Park Service.	Conduct visitor survey and enhance operations for current transit system.	Planning	Interagency Agreement with National Park Service.	95,000
WA	Wenatachee National Forest/United States Forest Service and National Park Service.	Redesign the Lake Chelan Dock infrastructure.	Planning	Interagency Agreement with United States Forest Service and National Park Service.	5,000
WY	National Elk Refuge and Grand Teton National Park/Fish and Wildlife Service and National Park Service.	Construct a 4.2 mile trail system from National Elk Refuge Visitor Center to the end of the National Elk Refuge.	Non-motorized	Direct Grant to Teton County (D2007–ATPL–006).	1,000,000
Total	.....	.....	.....	.....	19,788,840

Applying for Funds

Recipients who are State or local government entities will be required to apply for ATPPL funds electronically through FTA's electronic grant award and management system, TEAM. The content of these grant applications must reflect the approved proposal. (**Note:** Applications for the ATPPL program do not require Department of Labor Certification.) Upon grant award, payments to grantees will be made by electronic transfer to the grantee's financial institution through the Electronic Clearing House Operation (ECHO) system. Staff in FTA's Regional offices are available to assist applicants.

Recipients who are Federal land management agencies will be required to enter into an interagency agreement with FTA. FTA will administer one interagency agreement with each Federal land management agency receiving funding through the program for all of that agency's projects. Individual units of Federal land management agencies should work with the contact at their headquarters office listed above to coordinate the availability of funds to that unit.

Program Requirements

Section 5320 requires funding recipients to meet certain requirements. Program requirements can be found in the document ''Alternative Transportation in Parks and Public Lands Program: Requirements for Recipients of FY 2007 Funding'' available at *http://www.fta.dot.gov/atppl*. These requirements are incorporated into the grant agreements and inter-agency agreements used to fund the selected projects.

Pre-Award Authority

Pre-award authority allows an agency that will receive a grant or interagency agreement to incur certain project costs prior to receipt of the grant or interagency agreement and retain eligibility of the costs for subsequent reimbursement after the grant or agreement is approved. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility, including compliance with federal requirements such as the National Environmental Policy Act (NEPA), SAFETEA–LU planning requirements, and provisions established in the grant contract or Interagency Agreement. This automatic pre-award spending authority, when triggered, permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Under the authority provided in 49 U.S.C. 5320(h), FTA is extending pre-award authority for FY 2007 ATTPL projects effective as of October 15, 2007, when the projects were publicly announced.

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

d. Local funds expended pursuant to this pre-award authority will be eligible for reimbursement if FTA later makes a grant or interagency agreement for the project(s). Local funds expended by the grantee prior to October 15, 2007 will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction, prior to the completion of the NEPA process, would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

e. When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority, and the pre-award item in the project information section of TEAM should be marked ''yes.''

Reporting Requirements

All recipients must submit quarterly milestone/progress reports to FTA containing the following information:

(1) Narrative description of project(s); and,

(2) Discussion of all budget and schedule changes.

State and local government entities should submit this information through FTA's TEAM grants management system.

The headquarters office for each federal land management agency should collect a quarterly report for each of the projects delineated in the interagency agreement and then send these reports (preferably by e-mail) to Scott Faulk, FTA Office of Transit Programs, *scott.faulk@dot.gov*; 202–366–1660; 1200 New Jersey Avenue, SE.; E44–417; Washington, DC 20590. Examples can be found on the program Web site at *http://www.fta.dot.gov/atppl*. The quarterly reports are due to FTA on the dates noted below:

Quarter	Covering	Due date
1st Quarter Report	October 1–December 31	January 31.
2nd Quarter Report	January 1–March 31	April 30.
3rd Quarter Report	April 1–June 30	July 31.
4th Quarter Report	July 1–September 31	October 31.

In order to allow FTA to compute aggregate program performance measures as required by the President's Management Agenda, FTA requests that all recipients of funding for capital projects under the ATPPL program submit the following information annually:

- Annual visitation to the land unit;
- Annual number of persons who use the alternative transportation system (ridership/usage);
- An estimate of the number of vehicle trips mitigated based on alternative transportation system usage and the typical number of passengers per vehicle;
- Cost per passenger; and,
- A note of any special services offered for those systems with higher costs per passenger but more amenities.

State and local government entities should submit this information as part of their fourth quarter report through FTA's TEAM grants management system.

Federal land management agencies should also send this information as part of their fourth quarter report (preferably by e-mail), to Scott Faulk, FTA, *scott.faulk@dot.gov*; 202–366–1660; 1200 New Jersey Avenue, SE.; E44–417; Washington, DC 20590. Examples can be found on the program Web site at *http://www.fta.dot.gov/atppl*.

Oversight

Recipients of FY 2007 ATPPL funds will be required to certify that they will comply with all applicable Federal and FTA programmatic requirements. FTA direct grantees will complete this certification as part of the annual Certification and Assurances package, and Federal Land Management Agency recipients will complete the certification by signing the interagency agreement. This certification is the basis for oversight reviews conducted by FTA.

The Secretary of Transportation and FTA have elected not to apply the triennial review requirements of 49 U.S.C. 5307(h)(2) to ATPPL recipients that are other Federal agencies. Instead, working with the existing oversight systems at the Federal Land Management Agencies, FTA will perform periodic reviews of specific projects funded by the ATPPL program. These reviews will ensure that projects meet the basic statutory, administrative, and regulatory requirements as stipulated by this notice and the certification. To the extent possible, these reviews will be coordinated with other reviews of the project. FTA direct grantees of ATPPL funds (State, local and tribal government entities) will be subject to all applicable triennial, State management, civil rights, and other reviews.

Issued in Washington, DC, this 5th day of October, 2007.

James S. Simpson,

Administrator.

Appendix A—FTA Regional Offices

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Richard Doyle, FTA Regional Administrator, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055.

Region II

New Jersey and New York. Brigid Hynes-Cherin, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170.

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Letitia Thompson, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

Region IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands. Yvette Taylor, FTA Regional Administrator, 61 Forsyth Street, SW., Suite 17T50, Atlanta, GA 30303, (404) 865–5600.

Region V

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Marisol Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, (312) 353–2789.

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550.

Region VII

Iowa, Kansas, Missouri, and Nebraska. Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920.

Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Terry Rosapep, FTA Regional Administrator, 12300 West Dakota, Suite 310, Lakewood, CO 80228–2583, (720) 963–3300.

Region IX

American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1839, (415) 744–3133.

Region X

Alaska, Idaho, Oregon, and Washington. Richard F. Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954.

[FR Doc. E7–20213 Filed 10–12–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1013X]

Kaw River Railroad, Inc.—Discontinuance of Service Exemption—in Clay County, MO

Kaw River Railroad, Inc. (KRR) [1] has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 0.27-mile line of railroad between milepost 199.86 and milepost 200.13, in Kearney, Clay County, MO.[2] The line traverses United States Postal Service Zip Code 64060.

KRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line for at least 2 years and no overhead traffic can move over the line as it is stub-ended; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 14, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[3] must be filed by October 25, 2007.[4] Petitions to reopen must be filed by November 5, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to KRR's representative: Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] KRR was authorized to lease and operate the line in *Kaw River Railroad, Inc.—Lease and Operation Exemption—BNSF Railway Company*, STB Finance Docket No. 34693 (STB served May 12, 2005).

[2] BNSF Railway Company (BNSF) was authorized to abandon the above-described line in *BNSF Railway Company—Abandonment Exemption—in Clay County, MO*, STB Docket No. AB–6 (Sub-No. 450X) (STB served Aug. 15, 2007) (BNSF abandonment exemption). While BNSF was authorized to abandon its rail line located between milepost 199.07 and milepost 200.13, KRR's lease only extended to milepost 199.86 (which explains the 0.79-mile difference in mileages sought by BNSF and KRR).

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Any environmental or historical documentation required here under 49 CFR 1105.6(c) and 1105.8(b), respectively, is contained in the reports filed in the BNSF abandonment exemption.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 5, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–20113 Filed 10–12–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Statistics of Income (SOI) Corporate Survey

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Statistics of Income (SOI) Corporate Survey.

DATES: Written comments should be received on or before December 14, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the survey should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Statistics of Income (SOI) Corporate Survey.

OMB Number: 1545–1351.

Abstract: The SOI Corporate Survey is a yearly self-administered mail survey sent to a small select group of the very largest U.S. corporations. The survey is voluntary and requests specific line item tax return data. The survey data are used to supplement the SOI corporate files in order to produce corporate advance tax data estimates. Advance tax data has been requested by the Bureau of Economic Analysis in the Department of the Commerce, the Office of Tax Analysis in the Department of the Treasury, and the Joint Committee on Taxation in the U.S. Congress for tax analysis purposes.

Current Actions: There are no changes being made to the survey at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 175.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 88.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 5, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20186 Filed 10–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–EX

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–EX, Excise Tax Declaration for an IRS e-file Return.

DATES: Written comments should be received on or before December 14, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Declaration for an IRS e-file Return.

OMB Number: 1545–2082.

Form Number: Form 8453–EX.

Abstract: Form 8453–EX, Excise Tax Declaration for an IRS e-file Return, will be used in the Modernized e-File program. This form is necessary to enable the electronic filing of Forms 720, 2290, and 8849. The authority to e-file Form 2290 is Internal Revenue Code section 4481(e), as added by section 867(c) of Pub. L. 108–357.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Farms, Business or other for-profit institutions, Federal Government, Not-for-profit institutions, or State, Local or Tribal Government.

Estimated Number of Respondents: 15,000.

Estimated Time per Respondent: 2 hours 50 minutes.

Estimated Total Annual Burden Hours: 42,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 5, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20188 Filed 10–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–159824–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–159824–04, Regulations governing Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before December 14, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulations governing Practice Before the Internal Revenue Service.

OMB Number: 1545–1916.

Form Number: REG–159824–04.

Abstract: This collection of information is necessary to ensure practitioners comply with minimum standards when writing a State or local bond opinion. A practitioner may provide a single opinion or may provide a combination of documents, but only if the documents, taken together, satisfy the requirements of 31 CFR 10.39. In addition, the collection of information will assist the Commissioner, through the Office of Professional Responsibility, to ensure that practitioners properly advise taxpayers regarding state or local bonds.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 5, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20190 Filed 10–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions.

DATES: Written comments should be received on or before December 14, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions.

OMB Number: 1545–1349.

Abstract: The proposed research will improve the quality of data collection by examining the psychological and cognitive aspects of methods and procedures such as: Interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).

Current Actions: We will be conducting different opinion surveys, focus group sessions, think-aloud interviews, and usability studies regarding cognitive research surrounding forms submission or IRS system/product development.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and businesses or other for-profit organizations.

Estimated Number of Respondents: 75,000.

Estimated Average Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 37,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 5, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–20192 Filed 10–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Community Reinvestment Act

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 14, 2007. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725–17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Community Reinvestment Act.

OMB Number: 1550–0012.

Form Number: N/A.

Regulation requirement: 12 CFR Part 563e.

Description: This submission covers an extension of OTS's currently approved information collection in 12 CFR part 563e. The submission involves no change to the regulations or to the information collection.

OTS needs the information collected to fulfill its obligations under the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) to evaluate and assign ratings to the performance of institutions, in connection with helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. OTS uses the information in the examination process and in evaluating applications for mergers, branches, and certain other corporate activities. Financial institutions maintain and provide the information to OTS.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Individuals.

Estimated Number of Respondents: 838.

Estimated Number of Responses: 838.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 76,463 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Desk Officer for OTS, Fax: (202) 395–6974, U.S. Office of Management and Budget, 725–17th Street, NW., Room 10235, Washington, DC 20503.

Dated: October 9, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–20218 Filed 10–12–07; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 72, No. 198

Monday, October 15, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, 95, and 96

[Docket No. APHIS–2006–0041]

RIN 0579–AC01

Bovine Spongiform Encephalopathy; Minimal–Risk Regions; Importation of Live Bovines and Products Derived from Bovines

Correction

In rule document 07–4595 beginning on page 53314 in the issue of Tuesday, September 18, 2007, make the following correction:

On page 53332, in the third column, in the first paragraph, in the fifthteenth line, ''RO'' should read '' R_0''.

[FR Doc. C7–4595 Filed 10–12–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9353]

RIN 1545–BC67

Section 1045 Application to Partnerships

Correction

In rule document E7–15948 beginning on page 45346 in the issue of Tuesday, August 14, 2007, make the following correction:

On page 45347, in the first column, in the last line of the first paragraph, ''§ 601.601(d)(2)(ii)(b)'' should read ''§ 601.601(d)(2)(ii)(*b*)''.

[FR Doc. Z7–15948 Filed 10–12–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
October 15, 2007

Part II

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements—Amendments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2007–0584; FRL–8479–7]

RIN 2050–AG16

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements—Amendments

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to amend the Spill Prevention, Control, and Countermeasure (SPCC) rule in order to provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements for a facility owner or operator subject to the rule. Specifically, EPA is proposing to: Exempt hot-mix asphalt; exempt pesticide application equipment and related mix containers used at farms; exempt heating oil containers at single-family residences; amend the facility diagram requirement to provide additional flexibility for all facilities; amend the definition of ''facility'' to clarify the flexibility associated with describing a facility's boundaries; define ''loading/unloading rack'' to clarify the equipment subject to the provisions for facility tank car and tank truck loading/unloading racks; provide streamlined requirements for a subset of qualified facilities; amend the general secondary containment requirement to provide more clarity; amend the security requirements for all facilities; amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities; amend the integrity testing requirements for containers that store animal fat or vegetable oil and meet certain criteria; streamline a number of requirements for oil production facilities; and exempt completely buried oil storage tanks at nuclear power generation facilities. These changes tailor requirements to particular industries for easier and increased compliance, resulting in greater protection of human health and the environment. EPA is also providing clarification in the preamble to this proposed rule on additional issues raised by the regulated community.

DATES: Comments must be received on or before December 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2007–0584, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* EPA Docket, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OPA–2007–0584. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this proposed rule, contact either Vanessa E. Rodriguez at 202–564–7913 (*rodriguez.vanessa@epa.gov*), or Mark W. Howard at 202–564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

I. General Information

The Environmental Protection Agency (EPA or the Agency) is proposing several amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule to address a number of issues that have been raised by the regulated community. These proposed amendments are intended to increase clarity, tailor, and streamline certain requirements for a facility owner or operator who is required to prepare an SPCC Plan. Specifically:

- EPA proposes to exempt hot-mix asphalt (HMA) from the SPCC requirements. EPA believes it is unnecessary to apply the SPCC requirements to HMA. EPA would continue to regulate asphalt cement, asphalt emulsions, and cutbacks, which are not hot-mix asphalt, but is describing in this notice the flexibility contained in the SPCC rule regarding these materials.
- EPA proposes certain tailored requirements benefiting farms. Specifically, EPA proposes to exempt pesticide application equipment and related mix containers used at farms, that may currently be subject to the SPCC rule when crop oil or adjuvant oil are added to formulations. In addition, EPA seeks to clarify that the amendment related to mobile refuelers, as promulgated in the December 2006 rule amendments (71 FR 77266, December 26, 2006), can be used by farmers to address oil spill prevention requirements for fuel nurse tanks.
- EPA proposes to exempt residential heating oil containers, i.e., those used solely at single-family residences, from the SPCC requirements. This exemption would apply to aboveground containers, as well as completely buried heating oil tanks at single-family residences, including those located at farms.
- EPA proposes to modify the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112. These proposed revisions would allow an owner or operator to separate or aggregate containers to determine the facility boundaries, based on such factors as ownership or operation of the buildings, structures, containers, and equipment on the site, the activities being conducted, property boundaries, and other relevant considerations.
- EPA proposes to revise the facility diagram requirement at § 112.7(a)(3) to clarify how containers, fixed and mobile, are identified on the facility diagram. Where facility diagrams become complicated due to the presence of multiple fixed oil storage containers or complex piping/transfer areas at a facility, the owner or operator would be able to include that information separately in the SPCC Plan in an accompanying table or key. For any mobile or portable containers located in a certain area of the facility, an owner or operator would be able to mark that area on the diagram where such containers are stored. If the total number of mobile or portable containers changes on a frequent basis, the owner or operator would be able to indicate the potential range in number of containers and the anticipated contents and capacities of the mobile or portable containers maintained at the facility in the Plan.
- EPA proposes to define the term ''loading/unloading rack'' and specify that this definition would govern the applicability of the provision at § 112.7(h), *Facility tank car and tank truck loading/unloading rack*. This amendment would provide clarity to the regulated community over whether this provision applies to a facility. Furthermore, EPA is proposing to specifically exclude oil production facilities and farms from the requirements at § 112.7(h), because loading/unloading racks are not typically found at these facilities (loading/unloading activities at these facilities will remain subject to the general secondary containment requirements of § 112.7(c)). EPA also proposes editorial revisions to the provision at § 112.7(h) for clarity.
- EPA proposes to streamline and tailor the SPCC requirements for a subset of qualified facilities. Qualified facilities were addressed in a recent amendment to the SPCC rule (71 FR 77266, December 26, 2006). The owner or operator of such a facility was provided an option to self-certify his SPCC Plan and comply with other streamlined requirements. This proposed rule further defines a subset of qualified facilities (''Tier I qualified facilities'') as those that meet the current qualified facilities eligibility criteria and that have no oil storage containers with an individual storage capacity greater than 5,000 gallons. A Tier I qualified facility would have the option to complete a self-certified SPCC Plan template (proposed as Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan. By completing the SPCC Plan template, an owner or operator of a Tier I qualified facility would certify that the facility complies with a set of streamlined SPCC rule requirements. All other qualified facilities will be designated ''Tier II qualified facilities''.
- EPA proposes to amend the general secondary containment requirement at § 112.7(c) to make clear that the scope of secondary containment takes into

consideration the typical failure mode, and most likely quantity of oil that would be discharged, consistent with current Agency guidance. This proposed amendment would also provide additional examples of prevention systems for onshore facilities found at § 112.7(c)(1).

• EPA proposes to amend the facility security requirements at § 112.7(g) to allow an owner or operator to tailor his security measures to the facility's specific characteristics and location. A facility owner or operator would be required to describe in the SPCC Plan how he secures and controls access to the oil handling, processing, and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; and addresses the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges. This proposed action would extend the streamlined security requirements that EPA provided to a qualified facility in the December 2006 final rule (71 FR 77266, December 26, 2006) to all facilities subject to the security requirements.

• EPA proposes to amend the requirements at §§ 112.8(c)(6) and 112.12(c)(6) to provide flexibility in complying with bulk storage container integrity testing requirements. Specifically, EPA is proposing to modify the current provision to allow an owner or operator to consult and rely on industry standards to determine the appropriate qualifications for tank inspectors/testing personnel and the type/frequency of integrity testing required for a particular container size and configuration. This proposed action would extend the streamlined bulk storage container inspection requirement that EPA provided to qualified facilities in the December 2006 final rule (71 FR 77266, December 26, 2006) to all facilities subject to the integrity testing provision.

• EPA proposes to differentiate the integrity testing requirements at § 112.12(c)(6) for an owner or operator of a facility that handles certain types of animal fats and vegetable oils. Specifically, EPA proposes to provide the PE or an owner/operator certifying an SPCC Plan with the flexibility to determine the scope of integrity testing that is appropriate for containers that store animal fats or vegetable oil and that meet other criteria.

• EPA proposes several amendments to tailor the requirements for oil production facilities to address a number of concerns that have been raised by representatives of this sector. Specifically, EPA is proposing to: Modify the definition of production facility, consistent with the proposed amendments to the definition of facility; extend the timeframe by which a new oil production facility must prepare and implement an SPCC Plan; exempt flow-through process vessels at oil production facilities from the sized secondary containment requirements while maintaining general secondary containment requirements and requiring additional oil spill prevention measures; exempt flowlines and intra-facility gathering lines at oil production facilities from all secondary containment requirements, while establishing more specific requirements for a flowline/intra-facility gathering line maintenance program and contingency planning; and clarify the definition of ''permanently closed'' as it applies to an oil production facility. EPA also describes approaches that would establish alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility, and approaches to address produced water storage containers at oil production facilities.

• EPA proposes to exempt completely buried oil storage tanks at nuclear power generation facilities that are subject to design criteria under Nuclear Regulatory Commission regulations.

In this notice, EPA is also clarifying a number of issues of concern to the regulated community, including: the consideration of man-made structures in determining how to comply with SPCC rule requirements; and the applicability of the rule to wind turbines that are used to produce electricity. EPA also proposes technical corrections to §§ 112.3 and 112.12.

II. Entities Potentially Affected by This Proposed Rule

Industry sector	NAICS code
Oil Production	211111
Farms	111, 112
Electric Utility Plants	2211
Petroleum Refining and Related Industries	324
Chemical Manufacturing	325
Food Manufacturing	311, 312
Manufacturing Facilities Using and Storing Animal Fats and Vegetable Oils	311, 325
Metal Manufacturing	331, 332
Other Manufacturing	31–33
Real Estate Rental and Leasing	531–533
Retail Trade	441–446, 448, 451–454
Contract Construction	23
Wholesale Trade	42
Other Commercial	492, 541, 551, 561–562
Transportation	481–488
Arts Entertainment & Recreation	711–713
Other Services (Except Public Administration)	811–813
Petroleum Bulk Stations and Terminals	4247
Education	61
Hospitals & Other Health Care	621, 622
Accommodation and Food Services	721, 722
Fuel Oil Dealers	45431
Gasoline stations	4471
Information Finance and Insurance	51, 52
Mining	212
Warehousing and Storage	493
Religious Organizations	813110
Military Installations	928110
Pipelines	4861, 48691

Industry sector	NAICS code
Government	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil to navigable waters and adjoining shorelines from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which was replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DOT) and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation-related and non-transportation-related facilities. An MOU between EPA, the U.S. Department of the Interior (DOI), and DOT (59 FR 34102, July 1, 1994) re-delegated the responsibility to regulate certain offshore facilities from DOI to EPA.

IV. Background

The SPCC rule was originally promulgated on December 11, 1973 (38 FR 34164). On July 17, 2002, EPA published a final rule amending the SPCC rule, formally known as the Oil Pollution Prevention regulation (40 CFR part 112). The 2002 rule included revised requirements for SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications (67 FR 47042). The revised rule became effective on August 16, 2002. After publication of this rule, several members of the regulated community filed legal challenges to certain aspects of the rule. All but one of the issues raised in the litigation have been settled, following which EPA published clarifications in the **Federal Register** to several aspects of the revised rule (69 FR 29728, May 25, 2004).[1] In addition, concerns were raised about the implementability of certain aspects of the 2002 rule.

As a result, EPA proposed amendments to the SPCC rule in December 2005 and finalized them in December 2006 to address a number of issues, including those pertaining to certain ''qualified'' facilities, qualified oil-filled operational equipment, motive power containers, mobile refuelers, provisions inapplicable to animal fats and vegetable oils, and the compliance date for farms. See the final rule which published in the **Federal Register** at 71 FR 77266 (December 26, 2006) for a more detailed discussion of these amendments.

Also, in December 2005, EPA released the *SPCC Guidance for Regional Inspectors.* EPA intends to issue revisions to this guidance document to incorporate changes consistent with the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006). This guidance document is intended to assist regional inspectors in reviewing the implementation of the SPCC rule at a regulated facility. The guidance document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is available to the owner or operator of a facility that may be subject to the SPCC rule and to the general public on the Agency's Web site at *http://www.epa.gov/emergencies.* This guidance is a living document and will be revised, as necessary, to reflect any relevant future regulatory amendments, including any final rule based on this proposed action.

In addition, EPA has amended the dates for compliance with the July 2002 amendments to the SPCC rule by extending the dates for preparing or amending, and implementing revised SPCC Plans in 40 CFR 112.3(a), (b), and (c), most recently by final rule published May 16, 2007 (72 FR 27443). EPA took the most recent action to provide facilities time to fully understand the amendments to the SPCC rule finalized in December 2006 and to allow potentially affected owners and operators an opportunity to make any changes to their facilities and to their SPCC Plans, as well as to provide time for the Agency to take final action on this proposal. Additionally, EPA intends to provide the regulated community time to review and understand any revised material presented in the *SPCC Guidance for Regional Inspectors.* Please see the **Federal Register** notice (72 FR 27443, May 16, 2007) for further discussion of the compliance date extensions.

The December 2006 final rule (71 FR 77266, December 26, 2006) addressed only certain areas of the SPCC requirements and specific issues and concerns raised by the regulated community. As highlighted in the EPA Regulatory Agenda and the 2005 Office of Management and Budget report on ''Regulatory Reform of the U.S. Manufacturing Sector,'' EPA is proposing amendments in this notice to address other areas where further changes may be appropriate.

V. This Action

A. Hot-mix Asphalt

Hot-mix asphalt (HMA) is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, or gravel, which is formed into final paving products for use on roads and parking lots. All types of asphalt, including HMA, are petroleum oil products. As a result, a facility that stores and handles HMA may currently be regulated under the SPCC rule, if the applicability criteria are met (e.g., storage capacity thresholds and potential for a discharge into navigable waters or adjoining shorelines). As such, SPCC requirements, including secondary containment, apply to HMA containers. However, EPA never intended that HMA be included as part of a facility's SPCC Plan, particularly facilities which may be subject to the SPCC requirements solely because of the presence of HMA. Taken to the extreme, it could be argued that roads, parking lots, or other asphalt paving projects

[1] *American Petroleum Institute* v. *Leavitt,* No. 1:102CV02247 PLF and consolidated cases (D.D.C. filed Nov. 14, 2002). The remaining issue to be decided concerns the definition of ''navigable waters'' in § 112.2.

would be part of a facility's SPCC Plan. That was not and is not the Agency's intent.

In addition, because this material is unlikely to flow as a result of the entrained aggregate, there are few circumstances in which a discharge of HMA would reach navigable waters or adjoining shorelines. As a result, EPA is proposing to revise the rule to eliminate the requirement for an owner or operator of a facility otherwise subject to the SPCC rule to include a HMA container in the facility's SPCC Plan or aggregate storage capacity calculations.

1. Proposed Exemption for Hot-Mix Asphalt

This proposed rule amendment would exempt HMA from SPCC rule applicability by adding a new paragraph (8) under the general applicability section, § 112.1(d). Furthermore, EPA proposes to modify § 112.1(d)(2) so that the capacity of storage containers solely containing HMA would not be counted toward the facility oil storage capacity calculation. The Regional Administrator would continue to have the option under § 112.1(f), however, to require an owner or operator of a facility, including one solely handling HMA, to prepare or amend and implement an SPCC Plan or any applicable part, to include HMA containers if he determines that it is necessary in order to prevent a discharge of oil into navigable waters or adjoining shorelines.

For those substances that are not eligible for the proposed exemption, the SPCC rule provides the facility owner or operator with significant flexibility to select prevention and control measures that are appropriate and cost effective for the facility and type of product being stored. For example, the secondary containment requirements of the SPCC rule may be satisfied if the secondary containment system, including walls and floor, are capable of containing the oil and are constructed so that any discharge from a primary containment system will not escape secondary containment before cleanup occurs (§ 112.7(c)) and diked areas are sufficiently impervious to contain the oil (§ 112.8(c)(2)). Therefore, the flow properties of asphalt cement (AC), for example, (as for any oil) may be considered in designing appropriate means of containment. If, once cooled, the oil remains in place, an effective means of secondary containment may involve surrounding the bulk storage container with an earthen berm that will contain the oil until it can solidify. As stated in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), ''The suitability of earthen material for secondary containment systems may depend on the properties of both the product stored and the soil. For example, compacted local soil may be suitable to contain a viscous product, such as liquid AC, but may not be suitable to contain gasoline.'' If an owner or operator chooses to use an earthen berm as a method of secondary containment, the facility owner or operator should consider, among other factors, the effect of weather, vehicle and worker movement, access, and safety, in accordance with good engineering practice.

Furthermore, a facility owner or operator does not necessarily need to construct a berm around an asphalt cement container to satisfy the secondary containment requirements; he may opt to use a storm water retention pond or other similar structure or existing natural terrain features that would serve to divert, remotely impound, and prevent the discharge to navigable waters or adjoining shorelines. EPA notes that oil discharged into secondary containment needs to be removed promptly so that the containment system retains its appropriate capacity.

Finally, the Agency would note that the SPCC rule only applies to facilities that, due to their location, can reasonably be expected to discharge oil to navigable waters or adjoining shorelines. In determining whether there is a reasonable expectation of discharge, an owner or operator of a facility may consider the nature and flow properties of the oils handled at the facility. Therefore, the owner or operator of a facility that stores or handles only those oils that are solid at ambient temperatures may conclude that the facility is not subject to the SPCC rule. However, if a facility owner or operator determines that there is a reasonable expectation to discharge oil to navigable waters or adjoining shorelines for a single oil container, all oil containers at the facility are subject to the rule's requirements.

Although this proposed amendment would provide an exemption from the SPCC requirements for containers of HMA, HMA manufacturers and other facilities that use, store, distribute, or otherwise handle HMA may still be subject to the SPCC requirements due to the storage capacity of other types of oils (e.g., No. 2 fuel oil and heat transfer oils) at the facility.

The Agency seeks comments on the proposed exemption for HMA. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Alternative Options Considered

a. No Action

EPA considered taking no regulatory action regarding this issue. Under this option, a facility owner or operator would continue to be required to consider HMA in calculating the facility's total oil storage capacity, and comply with all SPCC requirements related to storage or transfer of HMA. The owner or operator would continue to benefit from the flexibility in the SPCC rule to provide secondary containment measures that are appropriate and cost effective for the facility and the asphalt it stores. EPA believes that it is unnecessary for an owner or operator of a facility that constructs roads, parking lots, or sidewalks to develop an SPCC Plan, solely for the routine end use of HMA as part of these operations. Moreover, as HMA is unlikely to flow as a result of the entrained aggregate, the Agency believes there are few circumstances in which a discharge of HMA would reach navigable waters or adjoining shorelines. Therefore, EPA chose not to propose this option.

b. Exemption for Asphalt Cement

EPA considered exempting both HMA and AC from the requirements of the SPCC rule, but chose not to propose such an option. In documents submitted to EPA, the asphalt industry argues that AC poses a low risk to navigable waters and adjoining shorelines, claiming that it does not flow if spilled on the ground. The industry further argues that asphalt facilities are either already covered under other environmentally protective regulations or are granted a specific exemption from other regulations due the unique nature of the product, and that the cost of complying with the SPCC regulation is disproportionate to the risk posed.

Because of the operational conditions under which AC is used and stored, AC does pose a risk of being discharged into navigable waters and adjoining shorelines. (See EPA's report, *Asphalt Under the Spill Prevention, Control, and Countermeasure Regulation,* August 29, 2007, in the docket for this proposal.) Although AC is semi-solid or solid at ambient temperature and pressure, it is generally stored at elevated temperatures. Hot AC is liquid—similar to other semi-solid oils, such as paraffin wax and heavy bunker fuels—and therefore is capable of flowing. All of these oils are regulated under the SPCC

rule to prevent discharges to navigable waters and adjoining shorelines.

EPA believes that the threat that AC, as well as other semi-solid oils, pose to navigable waters and adjoining shorelines can be effectively addressed by implementing the procedures and measures required under the SPCC regulation. As discussed previously, the current SPCC regulation provides flexibility to an asphalt facility owner and operator to account for site- and product-specific characteristics in implementing measures to prevent oil discharges in a cost-effective manner.

The Agency welcomes comments on these or other alternatives that could serve to address HMA, while at the same time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

B. Farms

The owner or operator of a farm, by virtue of storing or using oil, is potentially subject to the SPCC requirements. The December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006) defined a farm as ''* * * a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year.'' In providing the option for an owner or operator of a facility that stores 10,000 gallons of oil or less and meets other qualifying criteria to self-certify his SPCC Plan in lieu of review and certification by a Professional Engineer, the December 2006 amendments offered relief to an estimated 95 percent of all SPCC-regulated farms. The 2006 amendments also exempted mobile refuelers, which include fuel nurse tanks on farms, from the sized secondary containment requirements for bulk storage containers (see more detailed discussion regarding nurse tanks below). Finally, the 2006 amendments extended the date by which farms must amend their existing SPCC Plans to come into compliance with the July 2002 rule changes until the Agency publishes a final rule in the **Federal Register** establishing a new compliance date. This proposal does not affect this extended compliance date for farms. The Agency will propose a new compliance date for farms in the **Federal Register** at a later date.

While the December 2006 amendments provided streamlined requirements for most of the farms that are subject to the SPCC requirements, EPA believes further amendments to the SPCC rule are appropriate considering the unique characteristics of farm facilities, including their geographic scale, configuration, land ownership and lease structure, and on-farm activities. Specifically, EPA recognizes that a farm: May be privately owned and may contain the residence of the owner or operator; has a configuration that varies across the country, from farm to farm and season to season; contains low-volume oil storage that is often dispersed across different land parcels separated by roads and natural barriers; has multiple fueling sites; is located in a remote area; stores oil on-site for on-farm use and not for further distribution in commerce; uses oil seasonally in different quantities; and leases a significant amount of land to or from secondary parties. For these reasons, EPA is proposing additional amendments to the SPCC rule that further benefit farms.

As discussed in Section G of this preamble, EPA is proposing an additional option for a subset of qualified facilities (''Tier I'') that have a maximum individual oil storage container capacity of 5,000 gallons, by allowing these facilities to complete a simplified self-certified SPCC Plan template in lieu of a full SPCC Plan. This option would be available to any facility that meets the Tier I qualification criteria, including a farm. EPA expects that at least 128,000 farms (or more than 84% of the farms regulated by the SPCC rule) may be eligible for this proposed option.

EPA is also proposing to clarify the definition of ''facility'' in the SPCC rule, as discussed in Section D of this preamble. The proposed definition would clarify the existing flexibility for a facility owner or operator, particularly for a farmer, to define oil storage areas located on either contiguous or non-contiguous parcels of land (e.g., satellite storage areas) as separate facilities for the purpose of determining SPCC applicability and preparing/implementing an SPCC Plan.

Under this proposal (see Section C), EPA would exempt heating oil containers at single-family residences. EPA understands that farms often include, within the geographical confines of the facility, the residence of the owner or operator, and so the Agency believes this proposed amendment also will be of benefit to farms.

This proposal (see Section I) also addresses streamlining of the security requirements under § 112.7(g) to allow more flexibility in determining how best to secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; and address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges. This amendment will particularly benefit the owner or operator of a farm, because it allows for consideration of site-specific factors in determining how best to design security for the facility to prevent vandalism and detect spills from oil-handling areas. An owner or operator of a farm may also benefit from the currently proposed amendments related to loading/unloading racks (Section F of this preamble) and integrity testing (Section J).

The Agency believes that both the amendments finalized in 2006 and those being proposed in this notice provide significant flexibility to the agricultural sector. In this action, the Agency also is proposing further amendments to the SPCC rule to address concerns specific to the agricultural community regarding pesticide application equipment and related mix containers used at farms. The proposed amendments was informed by information collected by EPA through site visits to farms and numerous consultations with the U.S. Department of Agriculture (USDA). Farm site visits helped EPA further understand oil storage characteristics at a variety of farm operation types and sizes. The site visits included dairy farms, an orchard, an agribusiness supply company, and two rice farms.

1. Exemption for Pesticide Application Equipment and Related Mix Containers

EPA is proposing to amend the SPCC rule by adding a new paragraph (10) under the general applicability section, § 112.1(d) to exempt pesticide application equipment and related mix containers used at farms from the SPCC requirements. EPA also proposes to modify § 112.1(d)(2) so that the capacity of these pesticide application equipment and related mix containers (i.e., containers used to mix pesticides with oil immediately prior to application) would not be counted toward the facility oil storage capacity calculation. This equipment includes ground boom applicators, airblast sprayers, and specialty aircraft that are used to apply measured quantities of pesticides to crops and/or soil. The pesticide formulation may include petroleum-or vegetable-based oils in concentrated formulations or may

contain crop oil or adjuvant oil in the mix formulations added just prior to application, thereby potentially subjecting certain pesticide containers to the SPCC requirements, such as those for bulk storage containers under §§ 112.8(c) and 112.12(c). Containers storing oil prior to blending it with the pesticide, and containers used to store any pesticides after they have been mixed with oil, are considered bulk storage containers and are regulated as such under the SPCC rule.

EPA regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which establishes requirements for the registration and labeling of pesticides. Sections 19(e) and (f) of FIFRA grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. Under this authority, EPA established standards, including design and labeling requirements for pesticide containers and bulk pesticide containment. These standards were promulgated on August 16, 2006 for certain facilities that use, reuse, or store pesticides in containers with capacities of 500 gallons or greater (*Standards for Pesticide Containers and Containment,* 40 CFR parts 156 and 165; see 71 FR 47330, August 16, 2006). Facilities subject to these standards include pesticide registrants, agricultural retailers, and commercial pesticide applicators; however, farms were exempted from these standards. In evaluating the risk posed by pesticide containers and application equipment when promulgating the *Standards for Pesticide Containment Structures* in 40 CFR part 165, Subpart E, EPA noted that on-farm bulk storage of pesticides remains rare as opposed to on-farm bulk storage of oil, such as off-road diesel, on-road diesel and gasoline fuels. Additionally, EPA found that there was insufficient evidence of contamination occurring as a result of these containers or equipment to warrant their regulation under the pesticide container-containment rule. However, EPA reserved the option of reexamining the need for Federal regulation of on-farm pesticide bulk storage in the future if it became apparent that the application or use of pesticides was having significant detrimental impacts. Similarly, EPA does not believe that the regulation of pesticide application equipment and related mix containers used at a farm is appropriate under the SPCC rule.

EPA believes that, on a farm, the storage and application of pesticide mixtures that may contain oil just prior to application can be addressed through the use of best management practices (BMPs) that minimize the potential for discharges to navigable waters and adjoining shorelines. For example, a number of states have ''Farm*A*Syst'' programs (partnerships between government agencies and private business that foster pollution prevention on farms) that detail on-farm pesticide BMPs such as: (1) Adhere to pesticide label instructions and prepare only the necessary amount needed for immediate use; (2) prepare the pesticide mix immediately before application; (3) the equipment spray tank should be half full with water prior to mixing in the pesticide formulation; and (4) pesticides should be mixed and loaded on a concrete pad (*Improving Storage and Handling of Pesticides,* Farm-a-Syst North Carolina, April 1997. Found at *http://www.soil.ncsu.edu/assist/pesticides/*. This document is also available in the docket for this rule proposal).

EPA requests comments on the proposed exemption of pesticide application equipment and related mix containers from SPCC applicability. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Applicability of Mobile Refueler Requirements to Farm Nurse Tanks

In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA exempted mobile refuelers from the sized secondary containment requirements applicable to bulk storage containers. In the amended regulation, EPA defined a mobile refueler as ''a bulk storage container onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.'' (§ 112.2). In this action, EPA seeks to clarify that the definition of mobile refueler includes a nurse tank, which is a mobile vessel used at farms to store and transport fuel for transfers to or from farm equipment, such as tractors and combines, and to other bulk storage containers, such as containers used to provide fuel to wellhead/relift pumps at rice farms. A nurse tank is often mounted on a trailer for transport around the farm, and EPA believes that this function is consistent with that of a mobile refueler. A nurse tank, like other types of mobile refuelers, is exempt from the sized secondary containment requirements, but would need to meet the general secondary containment requirements at § 112.7(c).

EPA does not believe that additional regulatory action is warranted to clarify that a nurse tank at a farm can be considered a mobile refueler. EPA welcomes comments on this approach.

3. Alternative Options Considered

In developing the amendments proposed in this notice, EPA considered the following alternatives for differentiating the SPCC requirements for farms:

a. No Action

With the promulgation of the final amendments to the SPCC rule on December 26, 2006, EPA estimated that approximately 145,000 of the 152,000 farms subject to the SPCC rule (95 percent of regulated farms) identified in the Regulatory Impact Analysis may be eligible for the ''qualified facility'' or self-certification option. Additionally, EPA is proposing an alternative compliance option for a subset of qualified facilities by adding a new tier, identified as Tier I qualified facilities, that would provide even more flexibility to farms.

EPA believes that considerable flexibility was provided in the December 2006 amendments, as well as other amendments being proposed in this notice to address the definition of facility, the security and integrity testing requirements, residential heating oil containers, and further streamlining of the requirements for qualified facilities. Nevertheless, EPA has concluded based on comments from agricultural stakeholders, farm-related site visits, and the August 16, 2006 final action concerning pesticide containers (71 FR 47330), that additional amendments to the SPCC rule related to farms are necessary. Therefore, EPA chose not to propose this ''no action'' option.

b. Exempt Farms Below a Certain Storage Capacity Threshold

EPA considered exempting farms that stored oil below a certain storage capacity threshold from the SPCC requirements, but determined that sufficient data to support such an exemption exclusive to farms do not currently exist. Storage tanks found at farms are similar in function and design as those found at other types of facilities, and therefore have a similar potential for a discharge. Thus, an effort to substantiate an exemption for a subset of affected farms below a certain threshold would be difficult. As a result, EPA chose not to propose this option.

The Agency welcomes comments on this or other alternatives that could serve to address the needs of the agricultural sector, while at the same

time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

c. Alternative Qualified Facility Eligibility Criteria for Farms

Under § 112.6, a ''facility'' that has an aggregate above ground storage capacity of 10,000 gallons or less and that has not had a single discharge exceeding 1,000 U.S. gallons or two discharges each exceeding 42 U.S. gallons within any twelve month period in the three years prior is eligible for the ''qualified facility'' Plan requirements (i.e. a self-certified Plan in lieu of a PE certified Plan). The current criteria for ''qualified facilities,'' found at § 112.3(g), treat farms like all other facilities. However, there may be alternative criteria unique to farms that would be appropriate for identifying qualified facilities. EPA requests comment on (1) whether a change in the criteria is appropriate for farms; and (2) whether a higher threshold is appropriate for farms. Any alternative approach presented must include an appropriate rationale in order for the Agency to be able to consider it for final action.

C. Residential Heating Oil Containers

EPA understands that many regulated facilities, including farms, may include within the geographical confines of the facility the residence of the owner or operator. EPA did not intend to regulate residential uses of oil (i.e., those at non-commercial buildings) under the SPCC rule. For example, in 1973, EPA set the minimum facility aggregate storage capacity threshold for SPCC applicability (1,320 gallons) by considering common sizes of residential heating oil containers. The Agency stated in the preamble to the 1973 final SPCC rule (38 FR 34164, December 11, 1973) that containers of 660 gallons are the normal domestic code size for nonburied heating oil containers, and that buildings may have two such containers. Thus, the presence of a heating oil container at a residence was generally not intended, by itself, to trigger SPCC applicability since residences generally do not have significant quantities of other types of oil. However, at the time the rule was originally promulgated, the Agency did not consider residential heating oil containers that may be co-located with businesses. As a result, EPA recognizes that owners and operators may be counting these residential containers in determining the applicability of the SPCC rule to their facility, and including these containers in their SPCC Plans. Therefore, EPA proposes to amend the rule to exempt single-family residential heating oil containers.

This exemption would apply to aboveground as well as completely buried heating oil tanks at single-family residences. Heating oil tanks used for on-site consumptive use of oil are specifically exempted from the 40 CFR part 280 requirements, which apply to underground storage tanks (USTs). The SPCC rule does not apply to ''any completely buried storage tank * * * that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter * * * '' (§ 112.1(d)(4)). Because USTs used for storing heating oil for consumptive use on the premises where stored are exempted from part 280, completely buried tanks used for residential heating would currently need to be included in the storage capacity of an SPCC-regulated facility, and would be subject to applicable SPCC requirements.

1. Exemption for Residential Heating Oil Containers

EPA is proposing to specifically exempt from SPCC applicability containers that are used to store oil for the sole purpose of heating single-family residences (including residences at a farm) by adding a new paragraph (9) under the general applicability section, § 112.1(d). EPA also proposes to modify § 112.1(d)(2) so that the capacity of single-family residential heating oil containers would not be counted toward facility oil storage.

The current proposal would remove from SPCC applicability containers (both aboveground and completely buried) located at single-family residences that are used solely to store heating oil used to heat the residence. Under the proposed amendments, the owner or operator would not count any residential heating oil container as part of the facility's aggregate storage capacity for the purpose of determining SPCC applicability, and no SPCC requirements would apply to the exempted containers. The SPCC requirements would continue to apply, however, to containers for oil used to heat other non-residential buildings within a facility, because the exemption covers only residential heating oil containers.

This exemption is not limited to facilities with only one single-family home; EPA recognizes that there may be multiple single-family homes within one facility. For example, a farm that has multiple single-family homes within its boundaries would not need to consider the residential heating oil tanks at any of those homes for purposes of SPCC applicability. Groups of single-family homes within a military base would similarly be exempted.

EPA requests comment on this proposed exemption for single-family residential heating oil containers, and whether there is a better way to characterize containers used to store oil for heating buildings with a residential, rather than commercial, use, including whether there are any unique situations in which a residential heating oil tank would be subject to the SPCC rule because the aboveground oil storage capacity is greater than 1,320 U.S. gallons. Any alternative approach presented must include an appropriate rationale in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: Exemption for Residential Heating Oil Containers Only at Farms

EPA initially considered providing an exemption only for residential heating oil containers located at farms, because farms commonly include, within the geographical confines of the facility, the residence of the farmer. Under this option, only heating oil containers associated with residences on farms would benefit from an exemption from the SPCC rule. However, EPA understands that a facility associated with another industry sector, such as a military base or university, or a small business run out of the owner's home, may also contain a residential heating oil container. The Agency determined that there was no rationale to support not expanding the exemption to all residential heating oil containers. Therefore, the Agency chose not to propose this option.

EPA requests comment on this option, and whether an exemption for residential heating oil containers should be limited to any specific sector. Any alternative approach presented must include an appropriate rationale in order for the Agency to be able to consider it for final action.

D. Definition of Facility

EPA first defined both ''facility'' and ''production facility'' at § 112.2 in the July 2002 amendments to the SPCC rule (67 FR 47042, July 17, 2002). ''Facility'' is defined as: ''any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste

treatment, or in which oil is used, as described in Appendix A of this part. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.'' ''Production facility'' is defined as ''all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and located in a single geographical oil or gas field operated by a single operator.''

Since the July 2002 amendments were published, members of the regulated community have asked EPA which of these definitions governs the term ''facility'' as it is used in the applicability determination of the Facility Response Plan requirements under § 112.20(f)(1) when applied to an oil production facility. In May 2004, EPA issued a **Federal Register** notice clarifying this issue (69 FR 29728, May 20, 2004). Specifically, section 112.20(f)(1) describes the applicability of the Facility Response Plan (FRP) rule by setting the criteria for determining whether a ''*facility* could, because of its location, reasonably be expected to cause substantial harm to the environment * * *'' [emphasis added]. Members of the regulated community were concerned that the language in the definition of production facility (''located in a single geographical oil or gas field'') would require aggregation of oil production structures and equipment in such a way that would trigger the applicability of the FRP rule. However, as stated in the May 2004 **Federal Register** notice (69 FR 29728), because § 112.20(f)(1) consistently uses the term ''facility,'' not ''production facility,'' it is the definition of ''facility'' in § 112.2 that governs who is subject to § 112.20(f)(1), regardless of the specific type of facility. Thus, consistent with the May 2004 notice, the definition of ''facility'' governs the meaning of facility as it is used in § 112.20(f)(1), and accordingly, EPA is now proposing to amend the definition of facility to add language clarifying this point.

Industry sectors, including farms, military bases and other large government facilities (e.g., national parks), airports, and universities also have raised concerns over how to aggregate or separate containers, buildings, structures, installations, equipment, and piping for the purpose of SPCC applicability. Regulated community members have expressed concern that non-contiguous oil-handling areas with similar purposes or ownership are required to be aggregated together as one ''facility'' to calculate total oil storage and determine SPCC applicability. A farmer, for example, often has multiple fuel storage sites on land under his management, which may include owned and leased tracts. A USDA study shows that among farmers surveyed, satellite fuel storage sites were an average distance of 4.1 miles from the main site (U.S. Department of Agriculture, ''Fuel/Oil Storage and Delivery for Farmers and Cooperatives.'' March 2005).

EPA believes that the existing definition of ''facility'' provides considerable flexibility, and that the extent of a facility depends on site-specific circumstances. The *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) describes factors that may be considered relevant in delineating the boundaries of a facility for SPCC purposes. Those factors may include, but are not limited to: ownership, management, or operation of the containers, buildings, structures, equipment, installations, pipes, or pipelines on the site; similarity in functions, operational characteristics, and types of activities occurring at the site; adjacency; or shared drainage pathways. Consistent with this approach, EPA is proposing to amend the definition of facility to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities.

For further clarity, EPA is also proposing to amend the definition of ''production facility,'' as discussed in Section L of this notice.

1. Proposed Revisions to the Definition of Facility

EPA is proposing to amend the definition of ''facility,'' as found in § 112.2, in three ways: To clarify that this definition alone governs applicability of 40 CFR part 112; to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities; and to add the qualifier ''oil'' before the term ''waste treatment.''

To address concerns over whether the definition of ''facility'' or the definition of ''production facility'' controls the term ''facility'' as it is used in § 112.20(f)(1) when applied to an oil production facility, EPA is proposing to add the following sentence to the end of the definition of ''facility'': ''Only this definition governs whether a facility is subject to this part.'' This language is consistent with the clarification printed in a May 2004 **Federal Register** notice (69 FR 29728). The definition of ''production facility'' is used to determine which specific provisions of the rule may apply at a particular facility (e.g., § 112.9), in addition to the administrative and general rule requirements.

The Agency seeks comments on whether the proposed revision of the definition of ''facility'' to clarify that this definition governs applicability of part 112 is appropriate. Any suggestions for alternative language to amend the definition must include an appropriate rationale in order for the Agency to be able to consider it for final action.

To address concerns over how oil containers and equipment can be separated or aggregated for the purposes of determining facility boundaries and applicability of the SPCC requirements, EPA proposes to insert the following sentence into the definition of facility: ''Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities.'' EPA also proposes to add the terms ''property,'' ''parcel,'' and ''lease'' to the list of terms mentioned in the first sentence of the definition. EPA believes that adding these terms further distinguishes the attributes that can be considered in determining facility boundaries. These terms are intended to be those that are familiar to a regulated community member, such as a farmer or oil production facility owner, and are not meant to be exhaustive. EPA notes that an owner or operator may not determine his facility boundary in such a manner as to simply avoid applicability of the SPCC rule.

The Agency seeks comments on whether the proposed revision to the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities is appropriate. Any suggestions for alternative language to amend the definition must include an appropriate rationale in order for the Agency to be able to consider it for final action.

Finally, EPA is proposing to amend the first sentence of the definition of facility to add the qualifier ''oil'' before the term ''waste treatment.'' With this

amendment, EPA is clarifying that the term ''waste treatment'' refers to oil waste treatment and not to treatment of any other type of waste that may be generated. The Agency seeks comments on whether this proposed modification is appropriate.

2. Determining the Components of a Facility: Examples of Aggregation or Separation

The list of factors for determining the boundaries of a facility in the definition of facility are not exclusive, but are merely examples. *The SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) elaborates on what other factors may be considered. As noted above, those factors may include, but are not limited to: ownership, management, or operation of the containers, buildings, structures, equipment, installations, pipes, or pipelines on the site; similarity in functions, operational characteristics, and types of activities occurring at the site; adjacency; or shared drainage pathways.

EPA provides the following example scenarios of how a facility owner or operator may determine what is considered a ''facility'' for the purposes of an SPCC Plan. Each of these scenarios is purely hypothetical and is not intended to provide a policy interpretation for any specific existing facility.

a. Separation of Tracts at a Farm

A farmer has one central fueling location and ten separate (either contiguous or non-contiguous) tracts of land (inclusive of owned and leased tracts) where various types of crops are grown. The central fueling location has several oil containers, with an aggregate storage capacity of 5,000 gallons of diesel fuel, gasoline, and hydraulic/lubrication oils. Each tract has one 1,000-gallon aboveground container of diesel fuel, used for fueling only the equipment operated on the tract. The tracts are located such that the containers are each several miles from each other. The tracts each produce various types of crops, and thus the equipment is operated seasonally according to crop type and irrigation needs.

The farmer determines that, given the distance between containers, and the clear distinction between the operations that they support, each tract and the central fueling location can be considered a separate facility for the purposes of calculating oil storage capacity and determining the applicability of the SPCC rule. The fact that the tracts may be contiguous would be only one factor in the facility determination, and may allow the designation of the separate contiguous tracts as separate facilities, given the great distance and operational differences. In this example, each tract does not individually meet the aboveground storage capacity threshold for applicability of the SPCC rule (1,320 gallons). Therefore, no SPCC Plan is required for these containers. However, the central fueling location exceeds the SPCC rule aboveground storage capacity threshold. Assuming the farm is located such that a discharge of oil could reasonably pose a threat to navigable waters or adjoining shorelines, the farmer must prepare and implement an SPCC Plan for the central fueling area.

To provide general protection and prevention measures against an oil discharge, the farmer has the option to include the oil containers on the separate tracts in his Plan. Under Section 311(b)(3) of the Clean Water Act, the farmer would still be liable for any harmful quantities of oil discharged from the containers on the separate tracts into navigable waters or adjoining shorelines, even if an SPCC Plan is not required.

b. Separation of Parcels at an Oil Production Facility

An oil production facility operator leases the right to extract oil from three parcels of land separated by large distances within one oil production field. The parcels can be contiguous or non-contiguous. Each of the parcels is subject to a distinct lease agreement, consistent with all applicable state and local oil and gas laws and regulations. Each parcel contains a tank battery and a single or several wellheads. The operator determines that, given their geographic separation and individual lease agreements, each parcel can be considered a separate facility. Each tank battery stores a total aboveground capacity of oil greater than 1,320 gallons, so the operator prepares and implements a separate SPCC Plan for each tank battery and its associated wellheads, flowlines, and associated equipment, as individual facilities. Any gathering lines that transport oil from these individual facilities into a centralized collection area involve the transportation of oil between facilities (''inter-facility'') and are therefore not within EPA jurisdiction. These ''inter-facility'' gathering lines do not need to be included in the SPCC Plans.

Because the definition of facility is flexible, the operator could alternatively choose to consider all three parcels as one facility, based on his common ownership or operation of all of them. Under this approach, the operator would only need to prepare one SPCC Plan that covers the components of all parcels. Any gathering lines connecting the tank batteries of each parcel are then considered ''intra-facility'' gathering lines and must be included in the SPCC Plan (see section L.2 of this preamble). It is also important to note that if an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of applicability of the FRP rule requirements.

Additionally, a production facility may consist of parcels that are smaller or larger than an individual lease.

c. Aggregation of Equipment at an Oil Production Facility

An oil production facility owner operates one wellhead. Oil is treated in an 800-gallon capacity heater-treater to separate the oil from produced water; the treated oil is then stored in several stock tanks until it is sold and transported off-site. The heater-treater separation equipment is located several feet away from the stock tanks, which hold both the oil and produced water. These two areas may be physically separate and are protected by separate secondary containment berms, but the heater-treater is an integral component of an oil production facility, connected by piping, and under the control of the same operator. The separation equipment, such as a heater-treater, is a component of a larger process that would be incomplete without the ability to separate oil and produced water. Thus, all of these components should be aggregated together to comprise the oil production facility. In this circumstance, EPA does not believe the heater-treater should be considered a separate facility.

As another related example, an oil production facility owner operates one wellhead connected to the tank battery by a mile-long flowline. Despite the length of the flowline, the facility operator may not have a reasonable basis for separating the wellhead, flowline, and tank battery as distinct facilities with individual SPCC Plans. Similar to the heater-treater, the wellhead and tank battery are considered integral components of the larger process, and an oil production facility would be incomplete without including these two components. The flowline, whether several feet or several miles in length, is a necessary connection between the wellhead and tank battery, and all of these components must be included in one SPCC Plan.

An SPCC Plan must include all of the components that together comprise a complete facility. There may be no reasonable basis to determine that either of the facilities in these examples could be divided into separate, smaller facilities. While a facility owner or operator has some discretion in describing the parameters of his facility, he may not describe the boundaries of a facility unreasonably in an attempt to avoid regulation. EPA also notes that if an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of applicability of the FRP rule requirements.

d. Separation of Areas at a Military Base

A military base is spread out over 10 square miles. Within the base, there are several areas where oil containers are located: A tank farm associated with an aircraft fueling area, back-up fuel oil for a small power generation plant, and a mess hall with several drums of cooking oil. Because different groups service, manage, or maintain the various tank farms and oil storage areas, these operators have agreed to calculate the aggregate storage capacity of each of their operations separately to determine their SPCC rule applicability. The operations vary across these oil container locations, each with unique or specific characteristics. Thus, the operators have decided that oil spill prevention practices would be served best by preparing and implementing multiple SPCC Plans. If the military determines that it would be more efficient to prepare one SPCC Plan for the entire base, this would also be appropriate.

The same principles apply at other large facilities, such as a university or airport. While a facility owner or operator has some discretion in describing the parameters of his facility, he may not describe the boundaries of a facility unreasonably to avoid regulation. If an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of FRP rule applicability.

e. Separation of Functions at a Dual-purpose Facility

The owner of a truck maintenance company operates his business from a site that also includes his single-family residence. The business office is located in his residence. In an adjacent garage, he has one 500-gallon gasoline container, one 250-gallon waste oil container, and five 55-gallon drums of various automotive lubricants. The entire building is heated with one 500-gallon heating oil container. In considering whether he is subject to the SPCC rule, this business owner concluded that the heating oil container is exempt from the rule, because it is associated with his home, and the function of heating his home is necessary regardless of the presence of his business operations. The total storage capacity of the remaining containers does not meet the aboveground storage capacity threshold for applicability of the SPCC rule (1,320 gallons) and so the owner does not need to comply with the rule requirements.

3. Alternative Options Considered

In developing the amendments proposed in this notice, EPA considered the following alternatives for addressing the definition of facility:

a. No Action

EPA considered taking no regulatory action regarding this issue. However, given the significant number of questions and concerns that have been raised by the regulated community, EPA believes that addressing the definition of facility in some manner is necessary. Therefore, EPA chose not to propose this ''no action'' option.

b. Address Only Through Guidance

EPA considered providing guidance to address the regulated community's concern over the definition of facility and which definition governs the term ''facility'' as it is used in § 112.20(f)(1) when applied to an oil production facility. EPA has provided clarity already on the definition of facility in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) and through a **Federal Register** Notice (69 FR 29728, May 25, 2004). Despite these efforts, the regulated community continues to express concern. EPA believes that a formal rule amendment will provide more clarity. Therefore, EPA is not moving forward with the option to address this rule solely through guidance. EPA does intend, however, to revise the *SPCC Guidance for Regional Inspectors* to be consistent with any rule amendment(s) finalized.

The Agency welcomes comments on this or other alternatives that could serve to address the needs of the regulated community, while at the same time maintaining appropriate levels of environmental protection. Any alternative approaches presented must include an appropriate rationale in order for the Agency to be able to consider them for final action.

E. Facility Diagram

Section 112.7(a)(3) of the SPCC rule requires that a facility owner or operator include in his SPCC Plan a facility diagram that identifies the location and contents of oil containers, connecting piping, and transfer stations. The diagram helps to ensure safe and efficient response actions, effective spill prevention and emergency planning, and proper implementation of the Plan by facility personnel. It also assists the EPA inspector in reviewing the facility's SPCC Plan.

The rule requires that the facility diagram include the location and contents of each container, completely buried tanks (even if exempted from the SPCC requirements), transfer areas (i.e., stations), and connecting pipes. In addition to the requirement for a facility description and diagram, § 112.7(a)(3) lists additional items to be addressed in an SPCC Plan, including the type of oil in each container and its capacity; discharge prevention measures; discharge or drainage controls; countermeasures for discharge discovery, response, and cleanup; methods of disposal of recovered materials; and specific contact information. The *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) discusses the requirements for facility diagrams in more detail.

The facility diagram must include all containers (including oil-filled equipment) that store 55 gallons or more of oil and must include information indicating the contents of these containers (§ 112.7(a)(3)). The minimum container size addressed by the SPCC rule is 55 gallons. Any containers with an oil storage capacity of less than 55 gallons do not need to be included in the SPCC Plan.

Regulated community members have raised the concern that documenting the contents of all oil storage containers with a capacity of 55 gallons or more on a facility diagram would be impractical due to seasonal and market changes. EPA acknowledges these concerns, and proposes to add flexibility to this requirement.

1. Proposed Revision to the Facility Diagram Requirement

EPA proposes to amend § 112.7(a)(3) to clarify that the facility diagram must include all *fixed* (i.e., not mobile or portable) containers. For any mobile or portable containers located in a certain area of the facility, a facility owner or operator must mark that area on the diagram where such containers are stored. He may mark the number of

containers, contents and capacity of each container either on the facility diagram, or provide a separate description in the SPCC Plan. If the total number of mobile or portable containers changes on a frequent basis, the owner or operator can indicate an estimate in the Plan of the number of containers, the anticipated contents and capacities of the mobile or portable containers maintained at the facility.

Those oil storage containers that are located in a fixed position (and do not move around the facility) must be represented on the facility diagram, as currently required. In situations where diagrams become complicated due to the presence of multiple oil storage containers or complex piping/transfer areas at the facility, it may be difficult to indicate the contents and capacity of the containers on the diagram itself. In order to simplify the diagram, the owner or operator may choose to include that information separately in the SPCC Plan in an accompanying table or key.

The proposed revision to the rule language would simplify the process for developing a facility diagram by allowing for a general description of the location and contents of mobile or portable oil storage containers (e.g., drums and totes) rather than representing each container individually. Under this proposal, the owner or operator could identify an area on the facility diagram (e.g., a drum storage area) and include a separate description of the total number of containers, capacities, and contents in the Plan or reference facility inventories that can be updated by facility personnel. As currently required in § 112.7(a)(3)(i), an owner or operator is required to list all of the containers in the facility in the SPCC Plan. Under the current proposal, EPA would modify § 112.7(a)(3)(i) to allow the owner or operator to provide an estimate of the potential number of mobile or portable containers, types of oil, and anticipated capacities in the Plan. This clarification may be particularly useful when the number of containers change frequently at the facility. Thus, the Plan should include a reasonable estimate of the number of containers expected to be stored in the area and the capacity of the containers. This estimate can be used to determine the applicability of the rule thresholds and provide a general description of the mobile/portable containers in the Plan.

Mobile or portable containers should be marked on the facility diagram in their out-of-service or designated storage area or where they are most frequently located, such as a warehouse drum storage area. The facility owner/operator or certifying PE may determine how best to represent mobile/portable containers on the facility diagram, such as by including a descriptive table or indicating primary storage areas. A descriptive table or key would complement the facility diagram and the SPCC Plan by providing further information on the location and contents of mobile and portable containers.

A mobile or portable oil storage container is still subject to the sized secondary containment requirements of the SPCC rule. Sections 112.8(c)(11) and 112.12(c)(11) require that a mobile or portable oil storage container (other than a mobile refueler) be positioned or located to prevent a discharge as described in § 112.1(b). The mobile or portable container must have a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation. This area can be identified on the facility diagram.

A facility diagram prepared for a state or federal plan or for other purposes (construction permits, facility modifications, or other pollution prevention requirements) may be used in an SPCC Plan if it meets the requirements of the SPCC rule. Additionally, changes to the facility diagram are considered administrative in nature and do not require PE certification.

The Agency seeks comments on this proposed option or any other approach to revising to the facility diagram requirement at § 112.7(a)(3) to address how mobile/portable containers should be marked on a facility diagram. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

2. Indicating Complicated Areas of Piping or Oil-Filled Equipment on a Facility Diagram

A facility diagram must also include all transfer stations and connecting pipes (§ 112.7(a)(3)). Associated piping and oil-filled manufacturing equipment present at an SPCC-regulated facility may be difficult to clearly present on a facility diagram, due to their relative location, complexity, or design. EPA requests comment on whether a rule revision is appropriate to provide further clarification on how complicated areas of piping or oil-filled equipment may be indicated on the facility diagram. As stated in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), EPA allows flexibility in the way the facility diagram is drawn—an owner or operator may represent such systems in a less detailed manner on the facility diagram, as long as more detailed diagrams of the systems are maintained at the facility and referenced on the diagram. As described in the SPCC guidance document, the scale and level of detail shown on a facility diagram may vary according to the needs and complexity of the facility. For example, simplified schematic representations of piping combined with a description in the Plan may be sufficient. Similar to the approach described above for mobile/portable equipment, a facility owner or operator may indicate in the diagram an area where complicated oil-filled equipment is located and provide a table in the Plan describing the type(s) of equipment and oil storage capacities.

Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

F. Loading/Unloading Racks

Tank car and tank truck loading/unloading racks are subject to specific requirements in § 112.7(h), including sized secondary containment requirements. Although the term ''rack'' is referred to in the title of the provision, the rule text refers to ''loading/unloading area.'' In response to concerns expressed by the regulated community over how broadly this provision applies (whether to all areas where oil is loaded or unloaded, or only to areas with a designated loading or unloading rack), the Agency in May 2004 issued a **Federal Register** notice clarifying that the provision only applies at areas of a regulated facility where a loading or unloading rack is located (69 FR 29728, May 25, 2004). If a facility does not have a loading or unloading ''rack,'' § 112.7(h) does not apply. To provide further clarification, in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), EPA provided a set of characteristics that describe the type of equipment typically associated with a loading or unloading rack. To provide additional clarity and certainty to the regulated community, EPA is now proposing a definition for the term ''loading/unloading rack,'' which would govern whether a facility is subject to § 112.7(h). Under this proposal, the requirements described at § 112.7(h) would only apply to areas of a regulated facility where a loading/unloading rack, as would be defined in § 112.2, is located.

A loading/unloading rack can be located at any type of facility; however, the loading and unloading areas associated with oil production tank batteries and farms generally do not have the equipment meeting the proposed definition of loading/unloading rack. Therefore, EPA is proposing a specific exclusion for oil production facilities and farms from the requirements at § 112.7(h).

1. Proposed Loading/Unloading Rack Definition

The proposed definition for ''loading/unloading rack'' is based on the set of characteristics that generally describes loading/unloading racks, as presented in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005). In developing this description, EPA considered existing definitions of the term ''loading rack'' or related terms, as found in industry, Federal, state, or international references. Based on this review, EPA is proposing to use the definition (with certain changes) developed by the American Petroleum Institute (API).[2] Specifically, we removed language on frequency of use, various components, and the limitation to the types of facilities at which a rack could be located. EPA modified this definition in order to accommodate racks found among the broader universe of facilities subject to the SPCC rule. For this proposal, the guidelines presented in the guidance document were modified to reflect additional research on the equipment typically associated with racks and to remove several ambiguous terms and phrases (See EPA's *Analysis of Loading and Unloading Rack Requirement (40 CFR part 112)*, August 31, 2007).

EPA is proposing the following definition for ''loading/unloading rack'' under § 112.2: ''Loading/unloading rack means a structure necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to the requirements of this part. A loading/unloading rack includes a platform, gangway, or loading/unloading arm; and any combination of the following: piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.'' The Agency believes this proposed amendment will provide clarity as to the applicability of the § 112.7(h) requirement by providing a specific definition for a loading/unloading rack.

In developing this proposed definition, EPA considered whether to differentiate between ''loading'' and ''unloading'' racks. Generally, loading involves oil transfer from a bulk storage container into the tank car/truck, whereas unloading involves oil transfer from the tank car/truck into a bulk storage container. Although racks are more commonly used for loading activities, there are instances in which unloading of oil also occurs at a rack, and, in some cases, using the same equipment. The similarity of equipment and activities suggests that EPA should not differentiate between loading and unloading racks nor eliminate the term ''unloading rack'' altogether. This approach is consistent with correspondence received from the regulated community on this issue. For example, in an October 2003 letter to EPA, the American Petroleum Institute (API) suggested a definition for rack that includes both loading and unloading activities (see the docket for this proposed rulemaking for the complete letter).

EPA understands that a loading/unloading rack is typically designed to meet the needs of an individual facility, and thus a single definition that captures all potential variations of the components presents a challenge. However, discussions with manufacturers of loading/unloading racks suggest that there is some commonality among the basic structural components of a typical ''rack.'' Thus, each of the specific components listed in the proposed definition were included because they are common characteristics of loading or unloading racks.

Loading arms are an essential component of both top and bottom loading. By including the generic term ''loading/unloading arms,'' EPA intends the proposed definition to be applicable to all loading approaches, including top, side, and bottom loading. The National Institute of Standards and Technology (NIST) (*Loading-Rack Meters Presentations, Chapter 2: Introduction to Loading Rack Metering Systems*, Revised August 2000) indicates that loading racks are designed to fill receiving tanks either from the top, side or bottom. Although top loading is common, bottom loading is increasingly used to load/unload tank cars and trucks.

Platforms offer structural bases to a loading rack and are typical of both top and bottom loading. Platforms are often found in conjunction with additional components (e.g., gangways), whereas bottom-loading operations that do not require access to the top of a tank are sufficient with only a platform component.

Gangways are primarily found on loading racks that accommodate top loading operations. However, it is not uncommon for bottom loading operations to include gangways to access the top of the rack structure or receiving container during loading operations for the purposes of sampling, testing overfill or other safety equipment, or for pressure venting operations.

Piping assemblages, valves, pumps, shut-off devices, overfill sensors, and personnel safety devices are examples of typical accessories of a loading/unloading rack, but may not be part of the rack structure itself.

The Agency seeks comment on the proposed definition of ''loading/unloading rack'' or if there are any other definitions for ''loading/unloading rack'' that would be more suitable.

Comments providing a description of a ''loading/unloading arm'' may also provide useful information for EPA to consider in determining a final action. Any alternative definition presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Requirements for Loading/Unloading Racks

Although the title of § 112.7(h) refers to ''loading/unloading rack,'' the text of the requirement refers to ''loading/unloading areas.'' Therefore, to provide additional clarity, EPA proposes to change all references from loading/unloading ''area'' to loading/unloading ''rack.'' For example, § 112.7(h)(1) would be modified as follows: ''Where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading/unloading racks. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.'' Section 112.7(h)(2) would be similarly modified and includes a technical correction of the word ''break'' to ''brake'' to correct a typographical error.

The modification to change the word ''area'' to ''rack'' in § 112.7(h) is consistent with EPA's notice in the **Federal Register** in May 2004, which noted that the application of § 112.7(h) only applies to facilities with loading and unloading ''racks'' (69 FR 29728, May 25, 2004). EPA also clarified, in a letter to the Petroleum Marketers Association of America, that loading and unloading activities that take place beyond the rack area are not subject to

[2] American Petroleum Institute, October 18, 2002. Letter to David Lopez, Director, EPA Oil Program Center.

the requirements of § 112.7(h), but are subject, where applicable, to the general secondary containment requirements of § 112.7(c) (Letter to Daniel Gilligan, President, Petroleum Marketers Association of America, from Marianne Lamont Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA, May 25, 2004).

In the preamble to the July 2002 amendments to the SPCC rule, EPA stated that § 112.7(h) ''applies to containers which are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule)'' (67 FR 47110, July 17, 2002). This means that § 112.7(h) does not apply to a loading/unloading rack associated with a container that is exempted from the rule, such as an underground storage tank (UST) that is subject to all of the technical requirements of 40 CFR part 280 or a State program approved under part 281. EPA is reconsidering this position, because a transfer to or from such a container at an SPCC-regulated facility is a potential source of a discharge of oil into navigable waters or adjoining shorelines. Additionally, since a loading/unloading rack associated with the UST is not typically part of the UST system, it is not subject to all of the technical requirements of 40 CFR part 280 or 281, and is therefore regulated under SPCC in the same manner as any other transfer equipment or transfer activity located at an otherwise regulated SPCC facility.

In the preamble to the December 2006 amendments, EPA noted that although the amendment provided an exemption for motive power containers, the oil transfer activities to or from motive power containers occurring within an SPCC-regulated facility continue to be regulated (71 FR 77283, December 26, 2006). Consistent with the preamble to the December 2006 amendments, the Agency is clarifying that at an SPCC-regulated facility, § 112.7(h) (including the sized secondary containment provision) applies to transfers at any loading/unloading rack associated with any type of container, including one that is exempted from the rule, as long as the loading/unloading rack meets the definition proposed in this notice. A transfer not associated with a loading or unloading rack is subject to the general secondary containment provision at § 112.7(c). The Agency believes that no rule change is needed to clarify this point, because a rule amendment to exempt a loading/unloading rack associated with a UST was never proposed or finalized.

The Agency seeks comments on the proposed modifications to the provision at § 112.7(h), and how EPA regulates the transfers to or from completely buried tanks subject to all of the technical requirements under 40 CFR part 280 or part 281, or if there are any other modifications that would be more suitable. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. Exclusions

EPA is proposing to exclude onshore oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h). The provision currently excludes all offshore facilities. EPA understands that there are extremely few, if any, loading/unloading racks at oil production facilities. Similarly, EPA understands that farm oil and fuel dispensing equipment is generally not associated with loading/unloading racks. Oil transfer areas, such as loading/unloading areas, at farms and oil production facilities that are subject to the SPCC rule remain subject to the general secondary containment requirements of § 112.7(c).

EPA understands that there may be other facilities or industry sectors that are involved in the transfer of oil, but do not have a structure that meets the definition of ''loading/unloading rack'' as proposed in this notice. EPA is proposing to exclude onshore oil production facilities and farms from § 112.7(h), because the Agency is specifically aware that these types of transfer equipment are not typically associated with these types of facilities. EPA does not want to create any confusion for owners/operators associated with oil production facilities and farms, and for the purpose of clarity, is exempting them. At other facilities that do not have a loading/unloading rack, the provisions at § 112.7(h) similarly do not apply. As EPA stated in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005), ''Areas where oil is transferred but no loading or unloading rack is present are subject to § 112.7(c), and thus appropriate containment and/or diversionary structures are required. EPA does not require specifically sized containment for transfer areas; however, containment size must be based on good engineering practice.''

The Agency seeks comment on whether the proposed exclusion for onshore oil production facilities and farms from the loading/unloading rack requirements is necessary, or whether the proposed definition of the term ''loading/unloading rack'' would provide sufficient clarity as to the applicability of § 112.7(h) at oil production facilities and farms. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

4. Alternative Option Considered: No Action

EPA considered not providing any amendments to the SPCC rule related to loading/unloading racks. Under this approach, EPA would not provide a regulatory definition for loading/unloading rack or an exclusion for farms and oil production facilities, but would instead continue to follow the interpretation of loading/unloading rack as stated in the *SPCC Guidance for Regional Inspectors* and the May 2004 **Federal Register** notice. EPA chose not to move forward with this ''no action'' option because it would not address the ambiguity of the loading/unloading rack requirement as it currently stands.

The Agency seeks comment on whether there are any other alternative options that should be reviewed further by EPA prior to issuing a final action. Any suggestions for alternative options must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

G. Tier I Qualified Facilities

In December 2005 (70 FR 73524, December 12, 2005), EPA proposed to allow the owner or operator of a qualified facility to self-certify his SPCC Plan (this proposal was finalized in December 2006 at 71 FR 77266). In the preamble to this 2005 proposal, EPA discussed an alternative option that was developed in response to comments EPA received following publication of a Notice of Data Availability (NODA) for facilities that handle oil below a certain threshold amount (69 FR 56182, September 20, 2004) and was based on an analysis submitted by the Small Business Administration (SBA) Office of Advocacy. This ''multi-tiered approach'' was based on the total storage capacity of a facility, as follows:

- Tier I would include facilities that have between 1,321 and 5,000 gallons of total oil storage capacity. These facilities would not need a written SPCC Plan (and therefore no PE certification would be needed), but would have to adhere to all other SPCC requirements.
- Tier II would include facilities having between 5,001 and 10,000 gallons of total oil storage capacity.

These facilities would be required to have a written SPCC Plan, but the Plan would not need to be certified by a PE, and a PE site visit would not be required. Standardized Plans could be adopted by a facility conforming to standard design and operating procedures, without requiring PE certification.

- Tier III would include the remaining SPCC-regulated facilities with total oil storage capacities greater than 10,000 gallons. These facilities would be required to have a written SPCC Plan certified by a PE.

As described in its December 2006 final rule (71 FR 77266, December 26, 2006), EPA did not adopt this suggested multi-tiered structure approach because the Agency believes that a facility cannot effectively implement an oil spill prevention program, or any other program (business or otherwise), without documentation of that program's action items, such as in a written Plan. However, the Agency did finalize at that time requirements for one ''tier'' of qualified facilities to prepare a self-certified SPCC Plan. The Agency understands the concerns of small businesses, particularly of facilities with a smaller oil storage capacity and likely more limited resources, of the potential effort needed to develop a full Plan. Thus, the Agency is now exploring the possibility of further streamlining the SPCC requirements for certain qualified facilities that meet additional criteria.

EPA proposes to amend the SPCC rule to provide an additional option for an owner or operator of a qualified facility with a maximum individual oil storage container capacity of 5,000 U.S. gallons to complete and implement a streamlined, self-certified SPCC Plan template (proposed as Appendix G to 40 CFR part 112), in order to comply with the requirements of the SPCC rule. A qualified facility is one that meets the qualifying criteria described in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006): a facility that has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less; and has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve-month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years (this criterion does not include discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism). For a more complete discussion on these qualifying criteria, see the preamble to the December 2006 SPCC rulemaking at 71 FR 77266.

For clarity, EPA is now proposing the term ''Tier II qualified facility'' to describe those qualified facilities as defined by and subject to the requirements promulgated in the December 2006 SPCC rulemaking at 71 FR 77266 and to propose the term ''Tier I qualified facility'' for a new subset of these qualified facilities. EPA is proposing that a Tier I qualified facility, in addition to meeting the eligibility criteria for a Tier II qualified facility, also have no individual oil storage containers with a capacity greater than 5,000 U.S. gallons in volume, as described below.

1. Eligibility Criteria

As a subset of ''qualified facilities,'' Tier I qualified facilities must meet all of the eligibility criteria finalized by EPA in December 2006 (71 FR 77266), including reportable discharge history. In the current action, EPA is proposing an additional criterion for Tier I eligibility: a maximum individual oil storage container capacity of 5,000 U.S. gallons.

EPA has developed the proposed Tier I category based on an operational characteristic, rather than a lower total facility storage capacity threshold (as suggested by SBA), in order to link any streamlined requirements with a reduced potential for oil discharge. EPA proposes to set the maximum individual container capacity threshold at 5,000 U.S. gallons because this volume is consistent with industry consensus standards that call for varying levels of inspection stringency based on container size and configuration. For example, the Steel Tank Institute's SP001, *Standard for the Inspection of Aboveground Storage Tanks*, allows for periodic visual inspection alone, with no requirement for the inspector to be professionally certified, for containers of 5,000 U.S. gallons or less that are equipped with a spill control measure and a continuous release detection method. Furthermore, a facility with smaller storage containers often has less complicated operations, is typically an end-user of oil (does not distribute the oil further), is involved in few oil transfers, and may have predominantly mobile or portable containers with a few low-capacity fixed oil storage containers. Smaller containers have a smaller potential maximum discharge size, and there may be little or no piping associated with these small containers.

Determining the storage capacity for each oil storage container is straightforward, so it should be relatively simple for a qualified facility owner or operator to determine whether the facility meets this criterion. An EPA inspector will be able to easily verify the storage capacity for each container, and therefore confirm eligibility for Tier I status as a qualified facility.

This approach is similar to SBA's suggested Tier I eligibility criterion of a 5,000-gallon aggregate facility storage capacity threshold. However, by maintaining the higher facility capacity threshold that applies for all qualified facilities (10,000 U.S. gallons) and limiting the size of individual oil storage containers, EPA proposes an option from which a greater number of facilities, including those with a fluctuating oil storage capacity below 10,000 U.S. gallons, may benefit.

To determine eligibility as either a Tier I or Tier II qualified facility, only the aboveground oil storage capacity is considered. However, a completely buried oil storage tank located at a qualified facility is also regulated unless it is subject to all of the technical requirements of 40 CFR part 280 or a State program approved under part 281. That is, if a facility is subject to the SPCC rule, then both aboveground and completely buried oil storage containers located at the facility are subject to the rule, unless specifically exempted from applicability under § 112.1(d).

The Agency seeks comments on whether setting the criteria for Tier I qualified facilities as a maximum individual oil container capacity of 5,000 U.S. gallons appropriately addresses the concerns of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. Any suggestions for alternative criteria, including alternate container volume thresholds, must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Provisions for Tier I Qualified Facilities

In lieu of preparing a full SPCC Plan that is PE- or self-certified, EPA proposes that an owner or operator of a Tier I qualified facility would have the option to complete the SPCC Plan template proposed as Appendix G of 40 CFR part 112. The Plan template is designed to be a simple SPCC Plan that includes only the requirements that should apply to this lowest tier of regulated facilities. This proposed rule streamlines requirements for Tier I qualified facilities by eliminating and/or modifying several SPCC requirements (e.g., facility diagram (§ 112.7(a)(3)) and

certain provisions that generally do not apply to facilities that store or handle smaller volumes of oil, such as requirements for transfers taking place at loading racks (§ 112.7(h)).

The list of applicable rule provisions for Tier I qualified facilities is included as § 112.6(a)(3) of this proposal. For an owner or operator of a Tier I qualified facility completing the Plan template included in Appendix G of this part, the following existing requirements under § 112.7 and in subparts B and C continue to apply: facility description (§ 112.7(a)(3)(i), 112.7(a)(3)(iv), 112.7(a)(3)(vi), 112.7(a)(4), and 112.7(a)(5)); general secondary containment (§ 112.7(c)); inspections, tests and records (§ 112.7(e)); personnel, training, and discharge prevention procedures (§ 112.7(f)); security (§ 112.7(g)); qualified oil-filled operational equipment (§ 112.7(k)); facility drainage (§§ 112.8(b)(1), 112.8(b)(2), 112.12(b)(1), and 112.12(b)(2)); bulk storage containers (§§ 112.8(c)(1), 112.8(c)(3), 112.8(c)(4), 112.8(c)(5), 112.8(c)(6), 112.8(c)(10), 112.12(c)(1), 112.12(c)(3), 112.12(c)(4), 112.12(c)(5), 112.12(c)(6), and 112.12(c)(10)); piping inspections (§§ 112.8(d)(4) and 112.12(d)(4)); oil production facility requirements(§ 112.9(b), 112.9(c), 112.9(d)(1), 112.9(d)(3), and 112.9(d)(4)); and requirements for onshore oil drilling and workover facilities (§ 112.10(b), 112.10(c) and 112.10(d)). This list of requirements reflects a set of currently existing requirements that apply to facilities subject to the SPCC rule; EPA found no rationale to remove or modify these requirements for Tier I qualified facilities. Additionally, as described below, EPA is proposing a set of revised, or streamlined, requirements applicable to Tier I qualified facilities in lieu of specific existing requirements.

a. Streamlined Provisions for Tier I Qualified Facilities

EPA is proposing a set of revised requirements applicable to Tier I qualified facilities in lieu of the specific existing requirements.

In lieu of the full failure analysis requirements in § 112.7(b), EPA proposes that an owner or operator of a Tier I facility examine areas where there is a reasonable possibility for equipment failure (such as where equipment is loaded or unloaded; where tank overflow, rupture, or leakage is possible; or at the location of any other equipment known to be a source of discharge) and include in the Plan the total quantity of oil that could be discharged and a prediction of the direction of flow. This proposed amendment removes the requirement for an owner or operator of a Tier I facility to predict the rate of flow that could result from an equipment failure. This modified requirement is proposed as § 112.6(a)(3)(i). EPA believes this is appropriate because Tier I facilities will have only containers less than 5,000 gallons and, additionally, usually have low pressure pumps. In order to simplify completion of the SPCC Plan template, EPA is removing the requirement for an owner/operator to calculate the rate of flow that could result from an equipment failure.

Currently, secondary containment requirements for mobile/portable containers and all other bulk storage container requirements are provided in separate provisions: §§ 112.8(c)(2) and (c)(11) and 112.12(c)(2) and (c)(11). In lieu of these separate requirements, EPA proposes to (1) combine mobile/portable container requirements with the other bulk storage container requirements, and (2) eliminate the requirement for containment to be ''sufficiently impervious.'' This modified requirement is proposed as § 112.6(a)(3)(ii). Combining these requirements streamlines two similar provisions and simplifies requirements for Tier I qualified facilities. Because EPA expects a Tier I qualified facility to be a small, simple operation, with oil storage containers that are inside buildings, inside pre-engineered secondary containment, or double-walled, the requirement for containment to be specifically designed as ''sufficiently impervious'' may be unnecessary. Furthermore, the requirement for secondary containment to be capable of containing oil and constructed so that any discharge will not escape the containment system before cleanup occurs (§ 112.7(c)) still applies, and is similar in nature to the ''sufficiently impervious'' requirement. For the purposes of simplicity, EPA would rely on the requirement in § 112.7(c) to adequately address Tier I qualified facilities.

In lieu of §§ 112.8(c)(8) and 112.12(c)(8), the overfill prevention requirements, EPA proposes to require that an owner or operator of a Tier I qualified facility ensure each container is provided with a system or documented procedure to prevent overfills of containers, and that containers are regularly tested to ensure proper operation or efficacy. This modification provides more flexibility by allowing the use of alternative methods to prevent container overfills, rather than requiring an owner or operator to meet a prescribed set of overfill prevention procedures. This modified requirement is proposed as § 112.6(a)(3)(iii). EPA believes this proposed flexibility is warranted, because overfills can be prevented on smaller containers if tanks are manually gauged and the transfer is constantly attended. In order to comply with this requirement, a Tier I qualified facility owner or operator simply needs to provide a relatively brief description of the overfill prevention procedures in the SPCC Plan. The description needs to provide only sufficient detail that would allow an EPA inspector to understand how the owner/operator prevents overfills of oil storage containers and how liquid level sensing devices are tested.

Elsewhere in this notice, EPA is proposing to extend the streamlined security and integrity testing requirements that were provided for qualified facilities in the December 2006 SPCC rule amendment (71 FR 77266) to all facilities. Under this proposed approach, both Tier I and Tier II qualified facilities would be subject to the revised security (§ 112.7(g)) and integrity testing (§§ 112.8(c)(6) and 112.12(c)(6)) provisions.

b. Provisions Not Applicable to Tier I Qualified Facilities

The following requirements are not included in the SPCC Plan template because, for an end-use facility with a smaller oil storage capacity and a simple configuration, these requirements are inapplicable or unnecessary: facility diagram (§ 112.7(a)(3)); facility description (§ 112.7(a)(3)(ii), 112.7(a)(3)(iii)) and 112.7(a)(3)(v)); loading/unloading rack (§ 112.7(h)); brittle fracture evaluation (§ 112.7(i)); facility drainage (§§ 112.8(b)(3), 112.8(b)(4), 112.8(b)(5), 112.12(b)(3), 112.12(b)(4), and 112.12(b)(5)); monitoring internal heating coils (§§ 112.8(c)(7) and 112.12(c)(7)), effluent treatment facilities (§§ 112.8(c)(9) and 112.12(c)(9)); and facility transfer operations (§§ 112.8(d)(1), 112.8(d)(2), 112.8(d)(3), 112.8(d)(5), 112.9(d)(2), 112.12(d)(1), 112.12(d)(2), 112.12(d)(3), and 112.12(d)(5)).

Section 112.7(a)(3) Facility diagram. A qualified facility with no individual container greater than 5,000 U.S. gallons in capacity is typically small and generally simple in configuration. A facility diagram is not needed to understand the facility layout and locate areas of potential discharge at such facilities.

Section 112.7(a)(3)(ii) Discuss discharge prevention measures including routine handling of products (loading, unloading and facility

transfers). In order to simplify completion of the SPCC Plan template, EPA proposes to remove the administrative provisions that require discussion of oil handling at the facility. Smaller oil storage capacity facilities tend to have fewer oil transfers, which are generally conducted by an off-site oil distributor. Although the owner/operator should be familiar with the routine oil-handling activities and train employees on established procedures for oil handling, EPA does not believe it is necessary to include a description of these procedures in the SPCC Plan template.

Section 112.7(a)(3)(iii) Discuss discharge or drainage controls (e.g., secondary containment) and procedures. In order to simplify completion of the SPCC Plan template, we have removed the requirement to describe the facility drainage and secondary containment. Instead, Section 2 of the Plan template includes a table for the owner or operator to identify oil storage containers and the method of secondary containment provided for each container. EPA believes this is appropriate, considering the smaller volumes of oil stored or handled at these facilities.

Section 112.7(a)(3)(v) Discuss methods of disposal of recovered materials. In order to simplify completion of the SPCC Plan template, we have removed the requirement to discuss disposal methods for recovered materials. However, the owner/operator is still obligated to meet all local, state and Federal regulatory requirements for the proper disposal of oil contaminated materials following an oil discharge.

Section 112.7(h) Facility tank car and tank truck loading/unloading rack. Elsewhere in this notice, EPA is proposing a definition for the term ''loading/unloading rack.'' Given the Tier I qualified facility eligibility criteria, a Tier I qualified facility would be unlikely to have a loading/unloading rack, as proposed to be defined in § 112.2, because a Tier I qualified facility would not typically be involved with oil distribution. Therefore, eliminating this requirement is appropriate.

Section 112.7(i) Brittle fracture evaluation. This requirement applies to field-constructed, aboveground containers. Field-constructed containers tend to be greater than 5,000 U.S. gallons in capacity; under this proposal, a Tier I qualified facility would not have any containers greater than 5,000 U.S. gallons in capacity. Therefore, eliminating this requirement is appropriate.

Sections 112.8(b)(3)–(b)(5) and 112.12(b)(3)–(b)(5) Facility drainage requirements. A facility with a maximum individual container storage capacity of 5,000 U.S. gallons is unlikely to have complicated drainage systems. The purpose of drainage requirements listed in these provisions is to provide further specification for when drainage systems are used as secondary containment methods, and for how drainage from diked containment areas should be accomplished. In a smaller facility with less complicated operations, this additional specification is not necessary.

Sections 112.8(c)(7) and 112.12(c)(7) Requirements for monitoring internal heating coils. A facility with smaller oil storage containers is unlikely to have oil storage containers with heating coils due to the type of operations conducted and the kind of oil commonly used at such a facility. Therefore, eliminating this requirement is appropriate.

Sections 112.8(c)(9) and 112.12(c)(9) Effluent treatment facility inspections. A facility with smaller oil storage containers generally does not maintain an effluent treatment system. Therefore, eliminating this requirement is appropriate.

Section 112.8(d)(1) and 112.12(d)(1) Corrosion protection for buried piping. A facility with smaller oil storage containers generally does not maintain extensive or complicated buried piping systems. Therefore, eliminating this requirement is appropriate.

Sections 112.8(d)(2) and 112.12(d)(2), and 112.8(d)(3) and 112.12(d)(3) Capping or blank-flanging terminal connections and design of pipe supports. A facility with smaller oil storage containers generally does not maintain extensive or complicated piping systems, and piping is generally limited in length and adjacent to buildings or associated equipment. Therefore, eliminating this requirement is appropriate.

Section 112.8(d)(5) and 112.12(d)(5) Warn vehicles of aboveground piping. A facility with smaller oil storage containers generally does not maintain extensive or complicated piping systems that may be impacted by vehicles entering or leaving the facility. Furthermore, piping is generally limited in length and adjacent to buildings or associated equipment. Therefore, eliminating this requirement is appropriate.

Section 112.9(d)(2) Inspect saltwater disposal facilities. EPA does not expect there to be any saltwater disposal equipment generally associated with an oil production facility that meets the criteria for a Tier I qualified facility as described in this notice. Therefore, eliminating this requirement is appropriate.

EPA believes no further differentiation is warranted for onshore oil production facilities in § 112.9 and onshore oil drilling and workover facilities in § 112.10. An onshore oil production facility that qualifies as a Tier I qualified facility will generally have the same type of equipment as an oil production facility with larger oil storage capacity (i.e., a wellhead with a pumpjack, flowlines, oil separation equipment and oil storage and produced water containers) and therefore, no further differentiation is warranted. An onshore drilling or workover facility has three additional requirements under § 112.10. The facility must: position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b); provide catchment basins or diversion structures to intercept and contain discharges of fuel, crude oil, or oily drilling fluids; and install a blowout prevention (BOP) assembly and well control system that is effective to control wellhead pressure. The presence of smaller oil storage containers does not support differentiation of these requirements, however, an onshore oil production, drilling or workover facility that is eligible as a Tier I qualified facility will benefit from the differentiated requirements under § 112.7.

EPA also believes that no further differentiation is warranted for offshore drilling, production, and workover facilities subject to § 112.11. Due to the nature of operations associated with these types of facilities, they are not likely to meet the criterion of a maximum individual container capacity of 5,000 U.S. gallons.

The Agency notes that under the existing SPCC requirements, the Regional Administrator (RA), after reviewing a facility's Plan, has the authority under § 112.4 to require an owner or operator of a facility to amend the SPCC Plan if the RA finds that an amendment is necessary to prevent and contain discharges from the facility. Such an amendment may include requiring PE certification in accordance with § 112.3(d). Under this proposal, this provision would also apply to Tier I qualified facilities. An RA could, if warranted, require a Tier I qualified facility to prepare a full (i.e., not using the template) SPCC Plan with PE certification.

The Agency also notes that use of the Plan template approach would be optional. Under this proposed rule, an owner or operator of a Tier I qualified

facility could choose to prepare and implement either a full PE-certified SPCC Plan or a self-certified SPCC Plan according to all of the requirements of § 112.6(b) in order to comply with the requirements under 40 CFR part 112. In other words, if a Tier I qualified facility owner/operator chooses not to use the Plan template in Appendix G, he would then be required to comply with the Tier II qualified facility requirements in § 112.6(b). Any owner or operator of a qualified facility may also choose to prepare a full PE-certified Plan instead of a self-certified one.

The Agency believes that proposing a simpler, less costly compliance option for these smaller, less complex facilities will improve overall compliance with the SPCC regulation resulting in enhanced environmental protection. EPA seeks comments on whether the proposed streamlined set of rule provisions for Tier I qualified facilities addresses the concerns of owners and operators of facilities with relatively smaller volumes of oil and simpler configurations, while maintaining the environmental protection intended by the regulation. Any suggestions for alternative approaches and whether additional provisions should be included or excluded from the template must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. SPCC Plan Template

The proposed SPCC Plan template for Tier I qualified facilities is found at Appendix G in this proposed rule. To facilitate the development of SPCC Plans at Tier I qualified facilities, EPA would also make the Plan template available on its Web site, *http://www.epa.gov/emergencies.* Once completed and certified by the owner or operator, the Plan template would serve as the SPCC Plan for the facility. As for any facility subject to the SPCC rule, the owner or operator must maintain a written copy of the Plan—which in this case would be the completed and certified SPCC Plan template—at the facility or at the nearest field office if the facility is attended less than four hours per day (§ 112.3(e)).

a. SPCC Plan Template Format

The proposed template in Appendix G consists of a simple form, where the facility owner/operator can confirm that that the facility meets the rule requirements by marking the appropriate checkboxes. In other sections, the owner or operator would enter the relevant information in a summary table, or describe the equipment or procedures implemented at the facility to meet the requirements. Specifically, detailed descriptions would be provided for: (1) The inspection/testing program used for all aboveground storage containers and piping; (2) security measures (except for oil production facilities); (3) immediate actions to be taken in the event of a reportable discharge (i.e., a discharge to navigable waters or adjoining shorelines); (4) procedures for preventing overfills from each oil storage container; and (5) the flowline/intra-facility gathering line maintenance program (for oil production facilities).

The proposed template also includes attachments with various tables that the owner or operator may use to record compliance activities, such as periodic Plan reviews, equipment inspections, personnel training, and discharge notifications. Records of inspections and tests kept under usual and customary business practices also would suffice. An owner or operator may insert additional pages to his Plan to provide more detailed descriptions of equipment or procedures than allowed in the space provided in the template, and provide the appropriate reference in the relevant template field.

At a minimum, an owner or operator would be required to fill out all applicable portions of the Plan template. EPA would expect an owner or operator to complete all fields in the general portion of the template (Sections I and II, and III.1 through III.8), and the specific portion of the template that applies to their facility type (A, B, or C of Section III).

The first part of the proposed Plan template contains summary information about the facility. Section I contains the self-certification statement that must be signed by the owner or operator. By signing this statement, the facility owner or operator preparing the Plan would commit to implementing the measures described in the Plan. In Section II, the owner or operator acknowledges the requirements to review and amend the Plan, and Plan reviews and amendments can be recorded in Attachment 2 to the Plan template. Section III consists of the requirements that apply to all facility types and include, in order: (1) Oil Storage Containers; (2) Secondary Containment and Oil Spill Control; (3) Inspections, Testing, Recordkeeping, and Personnel Training; (4) Security (excluding oil production facilities); (5) Emergency Procedures and Notifications; (6) Contact List; (7) NRC Notification Procedure; and (8) SPCC Spill Reporting Requirements.

The owner or operator must also complete one of the Sections labeled A through C, according to the type of facility, as follows: Section A in the case of an onshore facility (excluding production) such as a farm; Section B in the case of an onshore oil production facility; and Section C in the case of an onshore oil drilling and workover facility. The Agency did not include requirements for offshore oil drilling, production or workover facilities in the template because EPA is not aware of any offshore drilling, production or workover facility that would meet the Tier I qualification criteria.

EPA believes that this simplified approach to developing an SPCC Plan for Tier I qualified facilities is responsive to the concerns expressed by small businesses and the SBA Office of Advocacy, and is consistent with the characteristics of these facilities having a limited number of oil storage containers, smaller overall oil storage capacities, simple configurations, fewer oil transfers, and often have no further distribution of oil.

The Agency seeks comments on whether the proposed SPCC Plan template in Appendix G for Tier I qualified facilities addresses the concerns of owners and operators of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. The Agency also seeks comments on the clarity and ease-of-use of the Plan template.

b. Environmental Equivalence and Impracticability Determinations

Use of the Appendix G template would be limited to those facilities that do not use environmentally equivalent measures under § 112.7(a)(2) and that do not determine secondary containment to be impracticable as per § 112.7(d). An owner or operator of a Tier I qualified facility who wants to use such deviations may choose to prepare and implement a self-certified Plan in accordance with the Tier II qualified facility requirements in § 112.6(b) and can then have a licensed PE review and certify those portions of the SPCC Plan that provide for alternate measures to be implemented at the facility. However, these facilities would not be able to use the template in Appendix G to comply with the SPCC rule because Tier II facilities have additional SPCC requirements that are not included in the Plan template. Tier I qualified facilities may also choose to prepare and implement a PE-certified Plan in accordance with the full set of applicable requirements in § 112.7 and subparts B and C of the rule.

4. Self-Certification and Plan Amendments

The elements of the Tier I self-certification requirement currently being proposed are similar in scope to those required for an owner or operator of a qualified facility who chooses to self-certify a Plan (as promulgated in December 2006, 71 FR 77266). An owner or operator of a Tier I qualified facility who chooses to complete an Appendix G template Plan would be required to certify that: (1) He is familiar with the applicable requirements of the SPCC rule; (2) he has visited and examined the facility; (3) the Plan has been prepared in accordance with accepted and sound industry practices and standards; (4) procedures for required inspections and testing have been established in accordance with industry inspection and testing standards and recommended practices; (5) the Plan is being fully implemented; (6) the facility meets the qualification criteria set forth under § 112.3(g)(1); (7) the Plan does not utilize the environmental equivalence or impracticability provisions under § 112.7(a)(2) and 112.7(d); and (8) the Plan and the individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

The template also includes a section that acknowledges the owner/operators' obligation to report oil discharges; review and amend the SPCC Plan; prepare an oil spill contingency plan and provide a written commitment of resources for qualified oil-filled operational equipment (in lieu of secondary containment) or for flowlines and intra-facility gathering lines at oil production facilities; implement the Plan; and certify that the information in the Plan is true.

Under § 112.5 of the SPCC rule, an owner or operator must review and amend the SPCC Plan following any change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). Consistent with the current requirement for qualified facilities, the owner or operator of a Tier I qualified facility would be allowed to self-certify any of these technical amendments to the Plan under § 112.6(a)(2), and document this certification in the Plan template.

If the owner or operator of a Tier I qualified facility makes changes to the facility such that the maximum individual oil storage container capacity is greater than 5,000 U.S. gallons, the facility no longer qualifies as a Tier I facility and is not eligible to implement the self-certified SPCC Plan template. The facility owner or operator must determine whether the facility still meets the eligibility criteria for a Tier II qualified facility (i.e., total aboveground storage capacity remains below 10,000 gallons). If the facility meets the Tier II qualified facility criteria, the owner/operator would be required to, within six months following the change in the facility, prepare and implement a Plan in accordance with the proposed § 112.6(b) or prepare and implement a Plan in accordance with the general Plan requirements in § 112.7, and the applicable requirements in subparts B and C, including having the Plan certified by a PE, as required under § 112.3(d). If, on the other hand, the facility is no longer a qualified facility, the owner/operator would be required to, within six months following the change in the facility, prepare and implement a Plan in accordance with the general Plan requirements in § 112.7, and applicable requirements in subparts B and C.

The Agency seeks comments on the appropriateness of these self-certification elements and Plan amendment requirements, and on whether there are other requirements that should be included. Any suggestions for differentiation for the template must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

5. Tier II Qualified Facility Requirements

EPA proposes to designate qualified facilities that do not meet the additional criterion for Tier I qualified facilities (i.e., no individual oil storage container with a capacity greater than 5,000 U.S. gallons) as Tier II qualified facilities. Although EPA is proposing changes to the organization of the regulatory text in § 112.6 in order to accommodate the tiered approach, the requirements for Tier II qualified facilities remain the same as they were finalized in December 2006 (71 FR 77266). Tier II qualified facilities may choose to comply with the requirements in proposed § 112.6(b) by completing and implementing a self-certified SPCC Plan, in lieu of having a PE-certified Plan. The self-certified SPCC Plan must comply with all of the applicable requirements of section § 112.7 and subparts B and C of the rule. The following table illustrates the tiers, criteria and options for qualified facilities and all others as described in this notice:

Qualified facilities		All other facilities
Tier I	Tier II	
If the facility has 10,000 gallons or less in aggregate aboveground oil storage capacity; *and* If the facility has not had (1) a single discharge of oil to navigable waters exceeding 1,000 U.S. gallons, or (2) two discharges of oil to navigable waters each exceeding 42 U.S. gallons within any twelve-month period, in the three years prior to the SPCC Plan certification date, or since becoming subject to the SPCC rule if facility has been in operation for less than three years; *and* If the facility has no individual oil containers greater than 5,000 gallons;	If the facility has 10,000 gallons or less in aggregate aboveground oil storage capacity; *and* If the facility has not had (1) a single discharge of oil to navigable waters exceeding 1,000 U.S. gallons, or (2) two discharges of oil to navigable waters each exceeding 42 U.S. gallons within any twelve-month period, in the three years prior to the SPCC Plan certification date, or since becoming subject to the SPCC rule if facility has been in operation for less than three years;	If the facility has greater than 10,000 gallons in aggregate aboveground oil storage capacity, *or* If the facility has had (1) a single discharge of oil to navigable waters exceeding 1,000 U.S. gallons, or (2) two discharges of oil to navigable waters each exceeding 42 U.S. gallons within any twelve-month period, in the three years prior to the SPCC Plan certification date, or since becoming subject to the SPCC rule if facility has been in operation for less than three years; *or* If the owner/operator is eligible for qualified facility status, but decides not to take the option;

Qualified facilities		All other facilities
Tier I	Tier II	
Then: The facility may complete and self-certify an SPCC Plan template (proposed as Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan reviewed and certified by a Professional Engineer (PE)	Then: The facility may prepare a self-certified SPCC Plan in accordance with all of the applicable requirements of § 112.7 and subparts B and C of the rule, instead of one reviewed and certified by a Professional Engineer (PE)	Then: The facility must prepare a PE-certified SPCC Plan in accordance with all of the applicable requirements of § 112.7 and subparts B and C.

It is important to note that Tier II qualified facilities would not be able to use the Appendix G template because it does not include all of the SPCC requirements that may apply for these facilities.

EPA is also proposing to remove the streamlined security and integrity testing requirements for qualified facilities. Under this proposal, the flexibility already available for qualified facilities would be extended to all facilities, so these requirements would be redundant.

6. Alternative Options Considered

In developing the amendments proposed in this notice, EPA considered the following alternatives for streamlining requirements for a subset of qualified facilities:

a. Exemption From SPCC Regulation

Under this option, EPA would exempt a certain subset of qualified facilities from the SPCC requirements altogether, based on a lower facility storage capacity threshold (e.g., 5,000 U.S. gallons). The exemption of Tier I qualified facilities from the SPCC regulation would significantly reduce the number of facilities subject to the SPCC requirements. This regulatory alternative would also simplify the applicability of the rule for qualified facilities. However, there is no rationale or basis for exempting Tier I qualified facilities completely from the SPCC rule. Furthermore, there are no data to support setting a facility capacity threshold lower than the current 10,000-gallon capacity threshold for qualified facilities.

b. Tier I Eligibility Criteria Based on Total Facility Storage Capacity

Under this option, EPA would determine the eligibility for Tier I qualified facilities by establishing a lower facility storage capacity threshold, such as 5,000 U.S. gallons. This action mirrors SBA's approach in its multi-tiered structure proposal (submitted as a public comment in response to the 2005 SPCC notice of proposed rulemaking, OPA–2005–0001–0120). One advantage of this option is its simplicity, since a facility owner or operator—once he determines that the facility is ''qualified'' according to the criteria promulgated in December 2006—would need only to consider the aggregate storage capacity to determine if the Tier I option is available.

However, there are no data to support setting a total facility capacity threshold for a subset of qualified facilities to establish a lower tier of differentiated requirements. Furthermore, no strong rationale exists to support some areas for differentiation in the template, based on a 5,000-gallon total facility storage capacity threshold alone. EPA's preferred option ties the container capacity threshold to existing differentiation in the STI SP001 standard for container inspections. Additionally, a lower tier at the 5,000-gallon threshold capacity may complicate applicability of the relief for facilities with fluctuating oil storage capacity.

The Agency seeks comments on these alternative options. Any suggestions for additional alternatives must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

H. General Secondary Containment

At a facility subject to the SPCC rule, all areas with the potential for a discharge as described in § 112.1(b) are subject to the general secondary containment provision, § 112.7(c). These areas may have loading/unloading areas (also referred to as transfer areas), piping, and/or mobile refuelers, and may include other areas of a facility where oil is present. The general secondary containment requirement requires that these areas be designed with appropriate containment and/or diversionary structures to prevent a discharge of oil in quantities that may be harmful (i.e., as described in 40 CFR part 110 into or upon navigable waters of the United States or adjoining shorelines; see § 112.1(b)). EPA clarified in the *SPCC Guidance for Regional Inspectors* (version 1.0, November 28, 2005) that ''appropriate containment'' should be designed to address the most likely discharge from the primary containment system, such that the discharge will not escape containment before cleanup occurs. With this proposed revision, EPA seeks to provide clarity consistent with the explanation found in the guidance document regarding the method, design, and capacity of secondary containment as required under § 112.7(c).

Furthermore, § 112.7(c)(1) and (2) list several example methods for providing secondary containment. These methods are examples only; other containment methods may be used, consistent with good engineering practice. To provide clarity for the regulated community, EPA is proposing to expand the list of examples of secondary containment methods for onshore facilities. By expanding this list of examples, EPA intends to include some additional prevention systems commonly used at facilities.

1. Proposed Revisions to the General Secondary Containment Requirement

a. Containment Method, Design, and Capacity

EPA proposes to clarify the general secondary containment requirement at § 112.7(c) by adding the text ''In determining the method, design, and capacity for secondary containment, you need only to address the typical failure mode, and the most likely quantity of oil that would be discharged. Secondary containment may be either active or passive in design.''

In the SPCC rule, the general secondary containment provision is complemented by various specific secondary containment requirements (e.g., §§ 112.7(h)(1), 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.12(c)(2), 112.12(c)(11)) which address the potential for oil discharges from specific parts of a facility where oil is stored or handled, such as at a bulk storage container or a loading/unloading rack. These specific secondary containment requirements address the design, sizing and freeboard capacity to account for a *major container failure.* In contrast, the general secondary containment provision is intended to address the *most likely oil discharge* from any part of a facility. Therefore, in determining how to provide appropriate general

secondary containment, a facility owner or operator would consider the typical failure mode and most likely quantity of oil that would be discharged. Based on these site-specific conditions, the owner or operator can determine what capacity of secondary containment is needed, and design the containment method accordingly. The most likely quantity of oil discharged is not often expected to be the maximum capacity of the container.

For example, at a regulated transfer area where a truck loads fuel into an oil tank, the owner or operator may determine that the reasonably expected source and cause of a discharge would be a ruptured hose connection, and that a shutoff valve is present and accessible to the attendant. To determine the most likely quantity of oil that would be discharged, the oil's rate of flow and the amount of time it would take for the attendant to close the valve need to be considered, in accordance with good engineering practice. Depending on the likely quantity of oil that would be discharged, the owner/operator may determine that the appropriate method of secondary containment is a passive containment measure, such as curbing around the area, or, if the likely quantity of oil is reasonably handled by spill kits, then such an active method of containment may be used.

Under this proposal, EPA would further amend § 112.7(c) to make it clear that the requirement allows for the use of both active and passive secondary containment measures to prevent a discharge to navigable waters or adjoining shorelines. Active containment measures are those that require deployment or other specific action by the operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge, so long as the active measure is designed to prevent an oil discharge from reaching navigable waters or adjoining shorelines. Active measures are also referred to as spill countermeasures. In contrast, passive measures are installations that do not require deployment or action by the operator.

The *SPCC Guidance for Regional Inspectors* (Version 1.0, November 28, 2005) provides several examples of the use of active measures at an SPCC-regulated facility. The efficacy of active containment measures to prevent a discharge depends on their technical effectiveness (e.g., mode of operation, absorption rate), placement and quantity, and timely deployment prior to or following a discharge. For discharges that occur only during attended activities, such as those occurring during transfers, an active measure (e.g., sock, mat, or other portable barrier, or land-based response capability) may be appropriate, provided that the measure is capable of containing the oil discharge volume and rate, and is timely and properly constructed/deployed.

The general secondary containment approach implemented at a facility need not be ''one size fits all.'' Different approaches may be taken for the same activity at a given facility, depending on the material and location. For example, the SPCC Plan may specify that drain covers and sorbent material be pre-deployed prior to transfers of low viscosity oils in certain areas of a facility located in close proximity to navigable waters/adjoining shorelines or drainage structures. For other areas and/or other products (e.g., highly viscous oils), the Plan may specify that sufficient spill response capability is available for use in the event of a discharge, so long as personnel and equipment are available at the facility and these measures can be effectively implemented in a timely manner to prevent oil from reaching navigable waters and adjoining shorelines.

Whatever method is used, the owner or operator must document in the SPCC Plan the rationale for each containment method (i.e., how the use of the measure is appropriate to the situation). The SPCC Plan must also describe the procedures to be used to deploy any active measures and explain the methods for discharge discovery that will be used to determine when deployment of the active measure is appropriate (§ 112.7(a)(3)(iii)).

EPA requests comments on the appropriateness of the proposed language for the general secondary containment provision to provide clarity regarding the method, design, and capacity of secondary containment as required under § 112.7(c), consistent with current Agency guidance. Any suggestions for alternative approaches must include an appropriate rationale in order for the Agency to be able to consider it for final action.

b. List of Secondary Containment Methods for Onshore Facilities

EPA also proposes to amend the general secondary containment provision at § 112.7(c)(1) to include the following additional example prevention systems for onshore facilities: Drip pans, sumps, and collection systems. Drip pans are typically used to isolate and contain small drips or leaks until the source of the leak is repaired. They are commonly used with product dispensing containers (such as drums), uncoupling of hoses during bulk transfer operations, and for pumps, valves, and fittings. Sumps and collection systems generally involve a permanent pit or reservoir and the troughs/trenches connected to it that collect oil.

By expanding the list of example secondary containment methods found in § 112.7(c)(1), EPA intends to increase the clarity and better represent current prevention practices. EPA emphasizes that the list of prevention systems are examples only; other containment methods may be used, consistent with good engineering practice.

EPA requests comments on the appropriateness of amending the general secondary containment provision to expand the list of example secondary containment methods found in § 112.7(c)(1). Any suggestions for alternative approaches must include an appropriate rationale in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: No Action

EPA considered taking no regulatory action regarding this issue. The current regulatory language currently allows for the facility owner/operator to design secondary containment based on a typical failure mode and likely quantity discharged. However, EPA believes that modifying the general secondary containment language at § 112.7(c) is appropriate to more clearly illustrate the flexibility already contained in the rule, as described in the guidance document.

3. General Secondary Containment for Non-Transportation-Related Tank Trucks

In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA exempted mobile refuelers from the sized secondary containment requirements applicable to bulk storage containers. In the amended regulation, EPA defined a mobile refueler as ''a bulk storage container onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.'' (See § 112.2). EPA recognizes that non-transportation-related tanker trucks may operate similarly to mobile refuelers, though not specifically transferring fuel. Therefore, they may have the same difficulty in complying with the sized secondary containment requirements. EPA requests comment on whether the regulatory relief provided to mobile refuelers in 2006 (i.e., an exemption

from the sized secondary containment requirements) should be extended to non-transportation-related tank trucks at a facility subject to the SPCC rule. Such tank trucks include those used to store for short periods of time and transport fuel, crude oil, condensate, non-petroleum, or other oils for transfer to or from bulk storage containers, e.g., a truck used to refill oil-filled equipment at an electrical substation or a pump truck at an oil production facility. Under this approach, the general secondary containment requirements at § 112.7(c) would still apply. This approach is also consistent with the general secondary containment requirements that are already applicable at the SPCC facility that the tank truck is visiting, and would simplify compliance for the facility. However, this exemption to sized secondary containment would not apply to a vehicle used primarily for the bulk storage of oil in a stationary location, in place of a fixed oil storage container.

I. Security

In December 2005 (70 FR 73524, December 12, 2005), EPA proposed to allow the owner and operator of a qualified facility to comply with a set of streamlined facility security requirements (finalized in December 2006 at 71 FR 77266). In the preamble to that proposal, EPA recognized that there is no one single approach to ensure proper facility security. For example, the security requirements for fencing and lighting may not always be appropriate for sites such as a national, state, or local park subject to the SPCC requirements, where the site layout may be too extensive to fence, and where the lighting of a solitary container would invite, rather than deter, would-be intruders. EPA has received comments from the regulated community suggesting that the security requirements should be revised for *all* regulated facilities, for reasons consistent with those for a qualified facility. EPA agrees that, even for a facility that is not a qualified facility, it may not be appropriate to provide fencing around the entire perimeter, and that lighting requirements in remote areas may attract, rather than deter, vandals. Additionally, many oil storage sites at farms, parks, and similarly isolated facilities have no electricity, which makes compliance with the lighting requirement difficult. In other cases, oil storage sites, such as those at farms, may be located where an owner or operator is present around the clock. Furthermore, due to the increased focus on security requirements by the Department of Homeland Security (DHS) and other regulatory agencies to which a facility subject to the SPCC rule may also be subject, EPA believes that it is important to provide flexibility in complying with the security requirements to allow an owner/operator of a facility to customize a security program. By revising the facility security requirements to make them more performance-based, EPA expects to improve compliance rates, thereby enhancing environmental protection.

1. Proposed Revisions to the Security Requirements

The application of the SPCC security measures is often determined by the facility's geographical/spatial factors and there is no ''one-size-fits-all'' answer to this requirement. Therefore, EPA is proposing to modify the security requirements at § 112.7(g) to make them consistent with the streamlined, performance-based requirements currently found at § 112.6(c)(3)(ii) for qualified facilities. Because the proposed revised requirements at § 112.7(g) would apply to all facilities (excluding oil production facilities), EPA proposes to remove § 112.6(c)(3), as it would be redundant.

This proposal would allow an owner or operator to describe in his SPCC Plan how he will:

- Secure and control access to all oil handling, processing and storage areas;
- Secure master flow and drain valves;
- Prevent unauthorized access to starter controls on oil pumps;
- Secure out-of-service and loading/unloading connections of oil pipelines; and
- Address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

A facility owner and operator would be required to document in his SPCC Plan how these security measures are implemented.

These proposed requirements would replace the more prescriptive fencing and other requirements, currently found in § 112.7(g)(1) through (5), and would allow the facility owner/operator to determine how best to secure and control access to areas where a discharge to navigable waters or adjoining shorelines may originate. With this proposed rule revision, EPA would also allow the facility owner/operator to determine how lighting can be used to deter intruders and to assist in the discovery of oil discharges, or whether there is a more appropriate, site-specific method. EPA believes that this proposed amendment would likely eliminate the need for PE-certified environmentally equivalent alternatives to the specified security requirements, because the proposed provision would already provide the flexibility for the owner/operator to provide whatever measures are most appropriate for the facility, as long as they accomplish the stated security goal.

EPA requests comments on the appropriateness of extending the streamlined security requirements already available to qualified facilities to all facilities regulated by the SPCC rule. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: No Action

EPA considered taking no regulatory action regarding this issue. A facility owner or operator could continue to use alternate measures in lieu of the more prescriptive requirements currently found at § 112.7(g), with a PE-certified explanation of how the alternate measures are environmentally equivalent. However, EPA believes that modifying the security requirements at § 112.7(g) to make them consistent with the streamlined, performance-based requirements currently provided for qualified facilities is appropriate. Therefore, EPA chose not to propose this ''no action'' option.

J. Integrity Testing

In December 2006, EPA promulgated an amendment (71 FR 77266, December 26, 2006) allowing the owner or operator of a qualified facility to comply with streamlined integrity testing requirements. This amendment allowed the owner or operator of a qualified facility to consult and rely on industry standards to determine appropriate qualifications for inspectors/testing personnel and the appropriate integrity testing method for a particular container based on size, configuration, and design, without the need for a PE-certified explanation for this environmentally equivalent deviation from the existing rule requirements at § 112.8(c)(6) or § 112.12(c)(6). In the preamble to the proposal for this amendment (70 FR 73524, December 12, 2005), EPA recognized that a facility owner or operator could rely on the appropriate use of industry standards for integrity testing requirements, and that in certain site-specific circumstances, visual inspection may be appropriate and sufficient for compliance with the integrity testing requirement. EPA has received comments from the regulated

community suggesting that the integrity testing requirements promulgated for qualified facilities should be extended to all regulated facilities, for reasons consistent with those for a qualified facility.

EPA believes that owners or operators of all types of facilities subject to either § 112.8(c)(6) or § 112.12(c)(6) would select particular testing methods to comply with these requirements based on industry inspection standards such as the Steel Tank Institute (STI) SP001 (*Standard for Inspection of Aboveground Storage Tanks*) and American Petroleum Institute (API) Standard 653 (*Tank Inspection, Repair, Alteration, and Reconstruction*). For containers that meet certain characteristics, industry standards may not require both visual inspection and another system of non-destructive shell testing, as is currently required in §§ 112.8(c)(6) and 112.12(c)(6).

For example, a facility may store oil in a mobile or portable container, such as a 55-gallon drum. Under the current requirements at §§ 112.8(c)(6) and 112.12(c)(6), drums are required to be visually inspected and are also subject to a non-destructive testing method on a regular schedule. Alternatively, a Professional Engineer may determine an environmentally equivalent measure, in accordance with § 112.7(a)(2). However, STI's SP001 standard specifies that the minimum inspection requirement for portable containers, such as drums, is visual inspection by the owner/operator unless no secondary containment is provided. Therefore, under this proposal to revise the integrity testing requirement, for portable containers provided with secondary containment, periodic visual inspection only by the owner/operator can be sufficient under §§ 112.8(c)(6) and 112.12(c)(6). For portable containers without secondary containment, the owner/operator must follow the requisite DOT leak testing and recertification requirements as outlined in 49 CFR 173.28 (reuse, reconditioning and remanufacturing of packaging), 49 CFR 178.803 (testing and certification of intermediate bulk containers (IBCs)), and 49 CFR 180.605 (or equivalent for portable container testing and recertification). Currently, an owner/operator of a non-qualified facility would need a PE to review and certify sections of his SPCC Plan demonstrating that such inspection procedures, which are based on provisions in the STI SP001 standard, are environmentally equivalent to § 112.8(c)(6) or § 112.12(c)(6), even if the owner or operator chooses to adopt inspection requirements directly from the industry standard.

Rather than require a PE-certified explanation of environmental equivalence every time a facility owner or operator chooses to base their integrity testing program on an industry standard instead of the more stringent requirements in § 112.8(c)(6) or § 112.12(c)(6), EPA is proposing to amend §§ 112.8(c)(6) and 112.12(c)(6) to replace these provisions with the more flexible language already provided for qualified facilities at § 112.6(c)(4)(ii).

1. Proposed Amendments to Integrity Testing Requirements

EPA proposes to replace the current regulatory requirements at §§ 112.8(c)(6) and 112.12(c)(6) with the regulatory requirements currently found at § 112.6(c)(4)(ii). EPA believes that any SPCC facility owner or operator subject to § 112.8(c)(6) or § 112.12(c)(6) should be allowed the increased flexibility offered by the inspection requirements at § 112.6(c)(4)(ii) (and corresponding reduction in burden associated with developing environmental equivalence determinations), particularly for portable containers. Because the proposed revised requirements at §§ 112.8(c)(6) and 112.12(c)(6) would apply to all facilities (excluding oil production facilities), EPA is proposing to remove § 112.6(c)(4), as it would be redundant.

This proposal requires a facility owner or operator to:

- Test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made.
- Determine, in accordance with industry standards, the appropriate qualifications of personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design.

These provisions allow an owner/operator to adopt inspection requirements outlined in industry standards without the need for environmental equivalence determinations to be certified by a PE. The revised provision would continue to require an owner/operator to keep comparison records (records of inspections and tests kept under usual and customary business practices will suffice) and to inspect the container's supports and foundations. The owner or operator would also be required to conduct frequent inspection of the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.

It is important to note that, under this proposal, a facility owner or operator may still deviate from the proposed rule provision, or from an industry standard, if the alternate measure is equivalent to the environmental protections provided by the rule requirement (as provided in § 112.7(a)(2)). In this case, a PE would need to certify the reason for the deviation and that the alternate measures are environmentally equivalent.

EPA requests comments on the appropriateness of extending the streamlined integrity testing requirements already available to qualified facilities to all facilities subject to § 112.8(c)(6) or § 112.12(c)(6). Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

2. Alternative Option Considered: No Action

EPA considered taking no action to modify the requirements at §§ 112.8(c)(6) and 112.12(c)(6). However, the Agency believes that all SPCC facility owners and operators subject to § 112.8(c)(6) or § 112.12(c)(6) should be allowed the increased flexibility offered by the inspection requirements currently provided for qualified facilities, particularly for the inspection of portable containers and small shop-built tanks. Therefore, EPA chose not to propose this ''no action'' option.

K. Animal Fats and Vegetable Oils

Stakeholders have commented that animal fats and vegetable oils (AFVOs) merit differentiated requirements under the SPCC regulation. In particular, the regulated community points to differences between the toxicity and biodegradation profiles of AFVOs and those of petroleum oils. Because of these claims, and in response to the Edible Oil Regulatory Reform Act (EORRA), the Agency has on several occasions formally requested information and supporting scientific data that would inform such a determination.

The Agency provided a detailed review of AFVO toxicity and environmental effects as part of the denial of a petition requesting to amend the Facility Response Plan (FRP) rule (62 FR 54508, October 20, 1997). EPA has reviewed the data available at that time, as well as more recent data that the Agency has gathered (See *Technical Background Document for Animal Fats and Vegetable Oils Regulated under the Spill Prevention, Control, and Countermeasure (SPCC) Regulation (40 CFR part 112*) (September 12, 2007) in the docket for today's proposed rulemaking). Based on this review, EPA

has determined that not all AFVOs are non-toxic. Additionally, there are other non-AFVO oils which have toxicity profiles that are similar to some AFVOs. Therefore, the Agency continues to believe that it is not appropriate to differentiate between AFVOs and other oils based on toxicity.

In addition, in 1999, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) regarding differentiation of the requirements for AFVOs from petroleum and other oils subject to the SPCC regulation (64 FR 17227, April 8, 1999). In the 2002 amendments to the SPCC rule, EPA provided new subparts to facilitate differentiation between categories of oil listed in EORRA (67 FR 47042, July 17, 2002). In December 2005, the Agency again requested comments and scientific evidence to support differentiation for AFVOs as part of a broader proposal to amend the SPCC requirements (70 FR 73524, December 12, 2005). In December 2006, the Agency promulgated amendments to the SPCC regulation, which included removing requirements that were not applicable for facilities that stored AFVO (71 FR 77266, December 26, 2006).

The Agency has again examined the data submitted in response to the aforementioned actions (*Technical Background Document for Animal Fats and Vegetable Oils Regulated under the Spill Prevention, Control, and Countermeasure (SPCC) Regulation (40 CFR part 112*), September 12, 2007). This data was submitted to support the claim that AFVOs biodegrade more readily than petroleum oils and therefore merit differentiated requirements under the SPCC rule. Although this data indicates that the AFVOs tested degraded to a greater extent than the petroleum oils tested, other data published in the scientific literature suggests that other non-AFVOs (e.g., some petroleum and synthetic oils) degraded equally to some AFVOs. EPA also notes that the biodegradation data submitted has been generated from laboratory tests, and therefore are only representative of the conditions set forth in the test, representing a relatively limited comparison of some vegetable oils with some petroleum oils. Additionally, other data published in the scientific and technical literature suggests that not all AFVOs are as readily biodegradable as some have claimed. These findings are consistent with the findings from other organizations that have used biodegradation tests to evaluate oils. That is, the laboratory tests suggest that there are petroleum and/or other oils that biodegrade similarly to AFVOs. As a result, EPA is unable to establish a ''bright line'' between AFVOs and all other oils based on biodegradability, and thus believes it is not appropriate to differentiate between them based on this criterion. For more information, see *Technical Background Document for Animal Fats and Vegetable Oils Regulated under the Spill Prevention, Control, and Countermeasure (SPCC) Regulation (40 CFR part 112*), (September 12, 2007), in the docket for this proposed rulemaking.

EPA is now considering whether there would be an alternative approach to differentiation that is not based on the oil's toxicity and its inherent physical/chemical properties, but rather based on the way these oils are stored and handled at a facility. EPA has focused specifically on the integrity testing requirements for bulk storage of AFVOs to address concerns raised by the regulated community. Therefore, the Agency is considering a compliance alternative for differentiated integrity-testing requirements for certain bulk storage containers that store AFVOs and that meet specific design and operational criteria.

Specifically, EPA is proposing to modify § 112.12(c)(6) to provide the PE or the owner or operator certifying an SPCC Plan the flexibility to determine the scope of integrity testing that is appropriate for certain AFVO bulk storage containers. This flexibility would apply to those bulk storage containers that are subject to the applicable sections of the Food and Drug Administration (FDA) regulation 21 CFR part 110, *Current Good Manufacturing Practice in Manufacturing, Packing or Holding Human Food,* and that meet the following additional criteria: (1) Are elevated; (2) made from austenitic stainless steel; have (3) no external insulation; and (4) are shop-built. That is, an owner or operator would be allowed to use industry standards for visual inspection of these containers, in lieu of the current integrity testing requirements (i.e., visual inspection and some other testing technique) or the proposed revisions to the integrity testing requirements as outlined under Section J in this proposal without having to make an environmental equivalence determination, including stating the reasons for nonconformance with the current integrity testing requirements, in accordance with § 112.7(a)(2). The owner or operator would be required to document procedures for inspections and testing in the SPCC Plan, including those for AFVO bulk storage containers that are eligible for the differentiated requirements in this proposal. EPA believes that AFVO bulk storage containers which meet the above criteria already have environmentally equivalent measures in place for integrity testing and thus, do not need to state reasons for nonconformance with the current integrity testing requirements (*i.e.*, visual inspection and some other testing technique). Therefore, we are proposing this alternative option for integrity testing and no environmental equivalence determination in accordance with § 112.7(a)(2) is necessary. This alternative would typically apply at food processing facilities that are subject to 21 CFR part 110 and store animal fats or vegetable oil that are intended for human consumption. The regulations at 21 CFR part 110 have specific requirements for the design, construction, and use of AFVO equipment. The Agency believes that the proposed criteria ensure that the AFVO containers are less prone to internal and external corrosion and that the design elements make visual inspection effective.

1. Differentiation Criteria

Properly designed and implemented integrity testing programs include practices and procedures to identify potential alterations to a bulk storage container's shell, bottom plate, foundation, and/or attached ancillary equipment, all of which may compromise a container's integrity. EPA generally believes it is important that the Plan include the scope of an integrity-testing program with consideration of established industry standards. Factors to consider when industry standards do not exist include, but are not limited to, the likelihood of the deterioration of the container foundation, stress-induced fractures in the shell wall or bottom plate, and internal and external corrosion. These are the factors the Agency considered in setting the proposed criteria. The FDA requirements for design and maintenance in addition to the criteria outlined in this proposal would be environmentally equivalent to the current integrity testing requirements under § 112.12(c)(6).

a. Containers Subject to FDA Regulations—21 CFR Part 110

When developing an integrity-testing program for AFVO bulk storage containers, FDA rule requirements may serve, in whole or in part, as alternative measures that provide equivalent environmental protection to an industry standard. Applicable requirements within 21 CFR part 110, when taken

together with the additional criteria in this proposal, can serve as equivalent alternative measures that include the main elements of an integrity-testing program under the SPCC regulation. The minimal elements for this type of integrity-testing program can be separated into three main structural integrity areas: (1) Container foundations, (2) container support structures, and (3) the container itself. FDA requirements in each of these areas serve to support this proposed rule for AFVO.

i. Container Foundations. FDA requires that facilities be constructed in such a manner that the floor, walls, and ceilings be adequately cleaned and kept clean and in good repair (21 CFR 110.20(b)(4)). Bulk storage containers that sit atop floors that fall under this requirement are expected to be maintained and kept in good repair. Substances that accumulate on the floor can present an unsanitary condition, which may lead to food contamination. In addition, cracks in the floor under and/or around the foundation of a bulk storage container can accumulate food particles, organic matter, pests, and other potentially unsanitary substances that also could lead to food contamination. EPA believes that the procedures and practices, such as frequent monitoring of the floor around a bulk storage container, that are implemented in order to address this requirement serve not only to comply with the FDA requirements, but also address the elements associated with the structural integrity of the container's foundation.

ii. Container Support Structures. FDA requires all plant equipment, including the container's structural supports, to be designed of such material and workmanship as to be adequately cleanable, and for it to be properly maintained (21 CFR 110.40(a)). Periodic maintenance of the structural support(s) of a bulk storage container is also an oil spill preventive measure, especially inside a facility where mobile equipment (e.g. forklifts) can strike and damage the container and/or its structural supports.

iii. Container Itself. When considering the potential for corrosion, EPA considered the FDA requirements for food contact surfaces (e.g., internal surface of a food oil bulk storage container) and non-food contact surfaces (e.g., external surface of a bulk storage container). In most cases, FDA requirements address only food contact surfaces. For the purpose of oil spill prevention, the potential for corrosion of the external surface of bulk storage container is equally important.

Internal Corrosion. FDA requires the design, construction, and use of equipment to preclude the adulteration of food with, among other potential contaminants, metal fragments (21 CFR 110.40(a)). FDA further requires that food contact surfaces shall be corrosion-resistant when in contact with food. While it is possible that corrosion of the interior surface of a bulk storage container can occur, it is also likely that any metal that dislodges from the interior surface is captured by a means that prevents metal inclusion. EPA believes that an owner or operator of a facility that monitors AFVOs for metal fragments as the oil exits the bulk storage container, either by sampling the oil itself for metal or by monitoring the inclusion prevention device for metal fragment accumulation, is a reasonable alternative approach to an internal inspection for corrosion. This, in conjunction with the design and applicable regulatory requirements are likely to prevent the corrosion of the internal contact surface in food grade AFVO bulk storage containers.

External Corrosion. For some bulk storage container configurations, external corrosion can be the primary concern with respect to their integrity. Significant corrosion to the exterior surface can occur from exposure to moisture and in some cases, may be enhanced if insulation is present. Significant corrosion can also occur from overfills of oil and/or any associated substance(s) that have accumulated on the exterior surface, as well as from cleaning and sanitizing agents.

FDA requires equipment that is in the manufacturing or food-handling area and that does not come into contact with food must be constructed to be kept in a clean condition (21 CFR 110.40(c)). Exterior surface of bulk storage containers that are located in the manufacturing or food-handling area and that are subject to this requirement, are expected to be maintained to a higher standard than other bulk storage containers, which are not subject to a similar requirement. Since plant equipment used in the manufacturing or food-handling area must be designed to be kept clean and withstand the corrosive effects of cleaning agents, it is generally constructed of austenitic stainless steel.

EPA requests comments on the appropriateness of using the FDA requirements under 21 CFR part 110 as a criterion for the proposed alternative approach for integrity testing. Any suggestions must include an appropriate rationale in order for the Agency to be able to consider it for final action.

b. Elevated Bulk Storage Containers

FDA recommends, but does not require, that all plant equipment be installed and maintained to facilitate its cleaning, including all adjacent spaces. According to 21 CFR 110.40(a), ''all equipment *should* be so installed and maintained as to facilitate cleaning of the equipment and of all adjacent spaces.'' In practice, an owner or operator of a facility implementing this recommended practice is likely to have a bulk storage container that is elevated off the floor, based upon discussion with AFVO container manufacturers and owners or operators of AFVO facilities. Food equipment is generally designed to stand on legs, which elevates the plant equipment off the floor so that the space between the plant equipment and the floor can be cleaned. For the purposes of oil spill prevention, elevated bulk storage containers allow visual inspections for oil discharges all around the container.

An elevated bulk storage container also facilitates complete drainage because the oil can be withdrawn from the lowest point in the container, so that foreign substances or materials do not accumulate and contaminate the food oil. For the purposes of oil spill prevention, self-draining containers operating using gravity flow allows complete drainage and prevents substances other than oil (e.g., water) from accumulating at the bottom of the container, thus minimizing corrosion. EPA believes that the self-drainage design, in conjunction with the applicable regulatory requirements, is likely to prevent the corrosion of the internal contact surface in food grade AFVO bulk storage containers.

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. Containers Made From Austenitic Stainless Steel

AFVOs are not required explicitly to be stored in austenitic stainless steel bulk storage containers under 21 CFR part 110. For example, a carbon steel container with an internal liner may suffice for the corrosion resistant requirements under FDA because in this case the lining is the food contact surface that is corrosion resistant. Although this meets the regulatory requirements for food contact surfaces, it also may be an indication that the oil in the bulk storage container is

incompatible with an unlined bulk storage container of the same material.

In addition, EPA believes that non-homogenous container systems (e.g., containers with external insulation, external coating, mild-carbon steel shell, internal liner) are more complex than homogenous container systems (e.g., containers constructed solely of austenitic stainless steel) and may require additional inspection measures to ensure the integrity of the container. Furthermore, austenitic stainless steel containers are often used because cleaning agents and acidic detergents used to clean food and non-food contact surfaces can be corrosive if used on incompatible surfaces. Therefore, EPA proposes to limit this alternative approach for integrity testing to AFVO bulk storage containers made of austenitic stainless steel.

It is important to note that this limitation is only for an owner or operator that chooses to take advantage of the alternative compliance option. A facility Plan may still be certified with an environmental equivalence determination, in accordance with § 112.7(a)(2) of the SPCC rule, for other types of bulk storage containers that are similarly corrosion resistant.

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

d. Containers With No External Insulation

EPA proposes to limit this proposed alternative option to containers with no external insulation. The Agency believes that inspections based on frequent monitoring of the exterior surface of a bulk storage container for corrosion and/or other mechanisms that can threaten a container's integrity is a minimum criterion for an alternative measure that provides equivalent environmental protection. External insulation covering the outside of a bulk storage container acts as a physical barrier to effective visual examination of the exterior surface. If not properly sealed, insulating materials covering the exterior surface of a bulk storage container and/or any associated equipment and piping can become damp. Insulation that retains moisture and that is adjacent to a container's exterior surface can cause significant corrosion, which may threaten the integrity of the container.

EPA is unaware of any sanitation provision or regulatory requirements that require an inspection between the insulation and the exterior surface of a bulk storage container. Furthermore, we do not know of any established industry methods or procedures, or industry standards specific to AFVOs, to evaluate the exterior surface of a bulk storage container that is covered by insulation. Therefore, EPA believes only containers with no external insulation should be included in this proposed alternative option for integrity testing.

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action. Additionally, we seek input on any applicable standards, sanitary provisions, or other regulatory requirements that apply to the construction, design and/or inspection of AFVO bulk storage containers.

e. Shop-Fabricated Containers

EPA has stated that visual inspection might suffice for elevated shop-built bulk storage containers because these containers can be inspected on all sides (67 FR 47120, July 17, 2002). In the *SPCC Guidance for Regional Inspectors* document, EPA went on to say that ''* * * visual inspection provides equivalent environmental protection when accompanied by certain additional actions to ensure that the containers are not in contact with the soil. These actions include elevating the container in a manner that decreases corrosion potential and makes all sides of the container, including the bottom, visible during inspection.'' Shop-fabricated bulk storage containers, as opposed to field-erected, may best fit these conditions.

EPA proposes to limit this proposed alternative option to shop-fabricated containers (i.e., shop-built). Shop-fabricated containers are those containers that are shop-assembled in one piece before transport to the installation site which limits the maximum capacity of the container so that they can be transported over the road by truck. Shop-fabricated containers generally have lower volume capacities, smaller tank diameters, and a fewer number of welds than field-erected containers and are typically comprised of a single type of material with a single wall thickness.

Alternatively, field-erected (i.e., field-constructed) containers can store much larger volumes of oil because individual pieces of the container can be transported to and assembled at the installation site, leading to much larger container capacities. Because of their greater size and complexity, field-erected containers have more stringent engineering requirements than shop-fabricated containers which would need to be considered in developing an appropriate inspection program. For example, field-erected containers may have variable shell-wall thicknesses, and/or be comprised of different materials to account for variations in the stresses caused by hydrostatic pressure. These field-erected containers generally have a significantly greater number of welds as compared to a shop-fabricated container because they are fabricated on-site from individual pieces. The stress on the container walls and joints is greater as the diameter and/or height of the container increases. Finally, a brittle fracture evaluation of a field-erected container may be necessary if the thickness of the shell wall is above a certain value and the container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure. The complexity associated with the construction of field-erected containers is considered in designing the scope and frequency of an integrity testing program.

This proposal, therefore, is limited to shop-fabricated containers because they are simpler in design and construction (e.g., typically subject to less stress, have fewer welds, and are less likely to be subject to brittle fracture failure) than field-erected containers. The Steel Tank Institute's (STI) SP001, *Standard for the Inspection for Aboveground Storage Tanks,* establishes the scope and frequency for visual inspections of shop-fabricated containers. This proposed rule is consistent with past regulatory guidance and current industry best practices for this particular class of bulk storage containers and thus, the Agency is proposing to require that the alternative option be limited to shop-fabricated containers.

EPA requests comments on this criterion for the proposed alternative approach for integrity testing for AFVO bulk storage containers. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for a final action.

2. Required Recordkeeping

The SPCC regulations require inspections and tests be conducted in accordance with the written procedures that the owner or operator or the certifying PE develop for the facility be kept with the SPCC Plan in accordance with the recordkeeping provisions of

§ 112.7(e). We believe that visual inspection that is part of periodic maintenance of bulk storage container's support and foundation must be documented. Records of inspections and tests kept under usual and customary business practices will suffice. To develop an appropriate inspection, evaluation, and testing program for an SPCC-regulated facility, the PE should refer to the appropriate requirements under 21 CFR part 110.

For these reasons, EPA believes that streamlined integrity-testing requirements for certain AVFO containers are warranted. This proposal does not relieve an owner or operator from complying with any other bulk storage container requirement in § 112.12(c). The Agency requests comments on the proposed approach and criteria. Any suggestions for alternative approaches must include a rationale and supporting data in order for the Agency to be able to consider it for final action.

L. Oil Production Facilities

Since its original promulgation in 1973, the SPCC rule has included differentiated requirements for oil production facilities (§ 112.9), as compared to other types of facilities (§§ 112.8, 112.10, 112.11., and 112.12). Based on issues brought forth by the regulated community and by other federal agencies (e.g., DOE), EPA is considering several ways that SPCC requirements can be further streamlined, tailored, or clarified for oil production facilities.

As discussed in Section F above, EPA is proposing to exclude oil production facilities from the loading/unloading rack requirements at § 112.7(h) because oil production facilities typically do not have the equipment meeting the proposed definition for a loading/unloading rack. Such oil production facilities may also benefit from the proposed revisions to the definition of ''facility,'' as described in Section D above, which may allow greater flexibility in determining the extent of a facility. Consistent with the revisions to the definition of ''facility,'' EPA is also proposing revisions to the definition of ''production facility'' to clarify that the production facility definition does not govern the applicability of 40 CFR part 112, but rather establishes which specific provisions of the rule may apply at a particular facility.

Additional specific modifications being proposed in this notice, as discussed below, include: Extending the timeframe by which a new oil production facility must prepare and implement an SPCC Plan; exempting flow-through process vessels at oil production facilities from the sized secondary containment requirements while maintaining general secondary containment requirements and requiring additional oil spill prevention measures; establishing more prescriptive requirements for contingency planning and a flowline/intra-facility gathering line maintenance program, while exempting flowlines and intra-facility gathering lines at oil production facilities from secondary containment requirements; and clarifying the definition of ''permanently closed'' as it applies to an oil production facility. EPA also describes approaches for alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility, and approaches to address produced water storage containers at an oil production facility.

1. Definition of Production Facility

As described in section D above, EPA is proposing to modify the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112. These proposed revisions would allow an owner or operator to separate or aggregate containers to determine the facility boundaries, based on such factors as ownership or operation of the buildings, structures, containers, the activities being conducted, property boundaries, and other relevant considerations. To provide clarity consistent with these proposed revisions, EPA is also proposing certain revisions to the definition of ''production facility.''

a. Proposed Revisions to the Definition of Production Facility

EPA is proposing to amend the definition of ''production facility,'' as found in § 112.2, in two ways. First, consistent with the proposed revision to the definition of ''facility,'' EPA seeks to clarify that while only the definition of ''facility'' governs the overall applicability of 40 CFR part 112, the definition of ''production facility'' is used to determine which of the type-specific sections of the rule may apply at a particular facility, in addition to the general rule sections. For example, if an onshore facility meets the definition of ''production facility,'' then the owner or operator is subject to the provisions of § 112.9, or potentially to the provisions of § 112.10 if the facility is involved in drilling or workover activities, in addition to §§ 112.1 through 112.7.

Second, consistent with the proposed revisions to the definition of ''facility'' that emphasize the flexibility in how a facility owner or operator can determine the boundaries of a facility, EPA is proposing to modify the definition of ''production facility'' to clarify the flexibility allowed in determining the extent of the facility. The current definition includes the phrase ''and located in a single geographical oil or gas field operated by a single operator.'' EPA proposes to modify the phrase to clarify that a production facility ''*may* be located in a single geographical oil or gas field operated by a single operator.'' Because the definition of facility is flexible, EPA recognizes that a production facility need not be located in a single geographical field operated by a single operator. Like other facilities, a production facility's boundaries may be determined based on site-specific factors such as ownership, management, or operation of the containers, buildings, structures, equipment, installations, pipes, or pipelines on the site; similarity in functions, operational characteristics, and types of activities occurring at the site; adjacency; or shared drainage pathways.

The Agency seeks comments on whether the proposed revision to the definition of ''production facility'' is appropriate. Specifically, EPA seeks comment on whether the phrase ''and located in a single geographical oil or gas field operated by a single operator'' should be deleted from the definition to provide greater clarity. Any suggestions for alternative language to amend the definition must include an appropriate rationale in order for the Agency to be able to consider it for final action.

b. Clarifications Related to Drilling and Workover Facilities

Under the SPCC rule, the term ''production facility'' can encompass drilling and workover activities, as well as production operations. However, different provisions of the rule apply to these different activities. Therefore, EPA seeks to clarify the requirements applicable to the various phases of activities at a production facility: drilling, production, and workover.

Both drilling and workover activities tend to be temporary in nature and are performed using mobile rigs and associated equipment. The owner or operator is required to develop an SPCC Plan under § 112.3(c) because a drilling or workover facility is considered a mobile facility. He is subject to the administrative and general requirements

of the SPCC rule (§§ 112.1 through 112.7), as well as the specific requirements in § 112.10 (for onshore facilities) or § 112.11 (for offshore facilities). EPA notes that under the requirements of §§ 112.10 and 112.11, a regulated oil storage container associated with a drilling or workover facility is subject to the general secondary containment requirement (§ 112.7(c)); however, no sized secondary containment requirements exist.

Drilling activities involve the initial establishment of an oil well: drilling the hole, inserting and cementing the casing, and completing the well to start the flow of oil to the surface. As noted above, a drilling facility must prepare and implement an SPCC Plan and is subject to the specific requirements in § 112.10 (for onshore facilities) or § 112.11 (for offshore facilities).

Once the oil is flowing, the drilling rig is removed from the site and production equipment, such as a pump or valve assembly, is set up to extract or control the flow of oil from the well. At this point, drilling activities have ceased and production has begun; the facility is considered a production facility. The processes performed at a typical oil production facility include extraction, separation and treatment, storage, and transfer. The owner or operator of a production facility is subject to the administrative and general requirements of the SPCC rule (§§ 112.1 through 112.7) as well as the specific requirements in § 112.9 (for onshore facilities) or § 112.11 (for offshore facilities).

During the life of an oil well, maintenance or remedial work may be necessary to improve productivity. A specialized workover rig, equipment, and associated containers are brought onsite to perform the maintenance or remedial activities. Workover operations are distinct from the normal production operations, and as such are not subject to the requirements of § 112.9, but are subject to the applicable requirements in § 112.10 (for onshore facilities) or § 112.11 (for offshore facilities). Because workover activities are a distinct operation and may be conducted by a separate owner or operator, a workover operation may be considered a separate, mobile facility, and described in a different SPCC Plan, separate from the production facility. EPA notes that although production activities may temporarily cease during workover, if the production equipment and containers (such as those found in a tank battery) remain operable then the production facility owner/operator must maintain his own SPCC Plan during workover activities. To clarify that drilling and workover activities are not subject to the provisions at § 112.9, EPA proposes to amend the title of § 112.9 to read ''Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities (*excluding drilling and workover facilities*).'' EPA also proposes to amend the introductory sentence of the section accordingly.

The Agency seeks comments on whether the proposed revisions to the title and introductory sentence of § 112.9 adequately clarify that the section does not apply to drilling and workover facilities. Any suggestions for alternative approaches must include an appropriate rationale in order for the Agency to be able to consider it for final action.

2. SPCC Plan Preparation and Implementation

EPA proposes to amend § 112.3(b) to extend the timeframe by which an oil production facility that becomes operational after July 1, 2009 must prepare and implement an SPCC Plan. Under the current rule, any facility that becomes operational after July 1, 2009 (a ''new facility'') must prepare an SPCC Plan before beginning operations. Unlike other facilities subject to the SPCC rule, however, an oil production facility has unique characteristics during the start-up period of its operations, which lead to variability in the amount and type of oil handled. EPA recognizes that, based on the often variable conditions of the oil reservoir, for some oil fields, the type and proportion of products may be uncertain until after the processes of extraction have begun. Additionally, the amount of pressure in the reservoir and the changes introduced by drilling the well hole could lead to variable initial flowrates that may take time to stabilize. While a new oil production facility on an older oil field may have predictable flowrates and proportion of product, the Agency notes the importance of providing this proposed relief for newer oil fields. The variables associated with the start of operations could lead to significant changes in necessary storage capacity and facility design. Such changes would necessitate that an owner/operator of a new oil production facility continually amend his Plan until operations stabilize, and have a licensed PE certify (or owner or operator of a qualified facility self-certify) any technical amendment. To alleviate this burden, EPA proposes to extend the time by which a new oil production facility must prepare and implement an SPCC Plan.

a. Proposed Timeframe for Plan Preparation and Implementation

The proposed amendment would allow a new oil production facility that becomes operational after July 1, 2009 six months after the start of operations to prepare and implement a Plan. The ''start of operations'' for an oil production facility is indicated by the start of well fluid pumping, transfer via flowlines, separation, treatment or storage of crude oil. EPA proposes to exclude oil production facilities from the current requirements at § 112.3(b)(1), and to add a new paragraph at § 112.3(b)(3) to provide the requirement for an owner or operator of a new oil production facility to prepare and implement an SPCC Plan six months after the start of operations.

The timeframe by which EPA is proposing to extend SPCC Plan preparation and implementation was chosen based on EPA's professional judgment, because such oil production facilities are likely to stabilize within six months after the start of operations. The proposed amendment is extended to oil production facilities only due to the circumstances specific to an oil production facility—their unique characteristics of variable and uncertain initial flowrates.

Delaying SPCC Plan preparation and implementation for a period of time after operations begin is somewhat consistent with the requirements originally promulgated in 1973 (38 FR 34164, December 11, 1973). At the time the rule was originally promulgated, EPA required preparation of an SPCC Plan six months after the start of operations and implementation of the Plan no later than one year after the start of operations. This requirement was amended in 2002 (67 FR 47042, July 17, 2002) to require new facilities (those that become operational after the effective date of the rule) to prepare and implement an SPCC Plan before beginning operations. EPA made this change because new facilities generally should already be aware of the need for an SPCC Plan. That is, new facilities subject to the SPCC rule are able to take SPCC requirements into consideration and undertake the necessary construction, purchase equipment, or develop procedures before the start of operations. However, this amendment in 2002 did not take into consideration the unique nature of oil production facilities.

Unlike the requirements originally promulgated in 1973, the proposed amendment combines the date for Plan preparation and implementation,

allowing six months total time to both prepare and implement an SPCC Plan.

EPA notes that it is reasonable and usually less expensive to implement certain oil spill prevention measures, such as secondary containment around containers, at the time of the container installation. Therefore, EPA recognizes that even during the interim period before required Plan preparation and implementation, an oil production facility may already have certain environmentally protective measures in place. Under Section 311(b)(3) of the Clean Water Act, the oil production facility owner or operator would still be liable for any harmful quantities of oil discharged from the facility into navigable waters or adjoining shorelines, even before the requirement to prepare and implement an SPCC Plan comes into effect. Furthermore, the Regional Administrator would continue to have the authority under § 112.1(f) to require an owner or operator of an oil production facility to prepare and implement an SPCC Plan or any applicable part at any point during the six months after start of operations, if a determination is made that it is necessary to prevent a discharge of oil into navigable waters or adjoining shorelines. In addition, a facility owner/operator can request an extension of time to come into compliance in accordance with § 112.3(f) if circumstances are beyond his control, e.g., there are no qualified personnel available or construction or equipment delivery delays.

The proposed rule amendment would apply only to a new oil production facility. The proposed amendment would not apply to a drilling or workover facility. Drilling and workover facilities are subject to the requirement at § 112.3(c) for mobile facilities and may implement a general Plan. Therefore, during the initial drilling of the well, there are measures required for spill prevention and response for any oil discharges.

EPA requests comments on whether an amendment to the Plan preparation and implementation date is appropriate for new oil production facilities, and whether new facilities in other industry sectors have similar variability during the start-up period of operations and would therefore benefit from a similar compliance date extension. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

b. Alternative Option Considered: One Year for Oil Production Facilities To Prepare and Implement a Plan

EPA considered an alternate option to address the variability in start-up operations at a new oil production facility, wherein an owner/operator would be allowed one year for SPCC Plan preparation and implementation after the start of operations. A variation of this alternative is to allow six months after the start of operations for SPCC Plan preparation, and another six months (for a total of one year after the start of operations) for Plan implementation. EPA recognizes that providing one year is consistent with the original promulgation of the rule in 1973. However, in proposing this amendment, EPA intends to provide this relief given the unique characteristics of a new oil production facility. Given that an oil production facility is likely to stabilize operations within six months from start-up, one year for Plan preparation and implementation does not seem necessary. The date for SPCC Plan preparation and implementation was selected given the timeframe for stabilization of operations at a new oil production facility. Additionally, a facility owner/operator can request an extension of time to come into compliance in accordance with § 112.3(f) if circumstances are beyond his control, e.g., no qualified personnel available or construction or equipment delivery delays. Therefore EPA chose not to propose this option.

The Agency welcomes comments on this alternative or other alternatives regarding the variability during the start-up period of operations at a new oil production facility. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. Flowlines and Intra-Facility Gathering Lines

EPA proposes to exempt flowlines and intra-facility gathering lines from the secondary containment requirements under the SPCC rule. In lieu of a secondary containment requirement, EPA proposes to require a contingency plan and written commitment of manpower, equipment, and materials for flowlines and intra-facility gathering lines at an oil production facility, and to prescribe specific requirements for a flowline and intra-facility gathering line maintenance program.

a. Examples of Flowlines and Gathering Lines

For the purposes of the SPCC rule, flowlines are considered to be the piping that transfers oil and well fluids from the wellhead to the tank battery where separation and treatment equipment are typically found. A flowline may also connect a tank battery to an injection well. Flowlines are relatively small diameter steel or fiberglass piping (generally less than four inches). Depending on the size of the oil field, flowlines may run for hundreds of feet to a tank battery.

The term ''gathering lines'' is a general term referring to the piping or pipelines that transfer the crude oil product between tank batteries, within or between facilities. Gathering lines often emanate from an oil production facility's lease automatic custody transfer (LACT) unit, which transfers oil to other facilities involved in gathering, refining or pipeline transportation operations. EPA recognizes that gathering lines are often outside of the Agency's jurisdiction because they ''transport'' oil outside of an oil production facility. Based on a 1971 Memorandum of Understanding (MOU) with the Department of Transportation (DOT) (see Appendix A to 40 CFR part 112), EPA has jurisdiction only over non-transportation-related facilities, which includes pipelines that transport oil within a facility. Any pipeline, including a gathering line, that transports oil between facilities or from a facility to a vessel, is considered transportation-related and is therefore outside the jurisdiction of EPA and not subject to the SPCC rule. However, the definition of ''facility'' as it applies to the SPCC rule is flexible. As discussed in Section D of this preamble, an owner/operator can choose to determine the facility's boundaries based on a number of site-specific factors. A typical oil production facility includes a wellhead, a tank battery (including, but not limited to, separation equipment, stock oil containers and produced water containers), and the flowlines that transfer the oil and well fluids from the wellhead to the tank battery. Depending upon how an owner/operator defines his facility, an oil production facility may also include gathering lines. For example, if multiple tank batteries are included as part of the same facility for purposes of developing one SPCC Plan, then any gathering lines that connect the tank batteries, or flow to a central collection or gathering area or centralized tank battery within the facility boundaries, must also be included in the SPCC Plan. EPA

considers any gathering lines within the boundaries of a facility to be ''intra-facility gathering lines'' and within EPA's jurisdiction for the purposes of SPCC rule applicability.

EPA notes that the definition of ''production facility'' has included both the terms ''flowlines'' and ''gathering lines'' since it was promulgated in July 2002 (67 FR 47042), and that EPA is simply clarifying, not modifying, the applicability to these types of pipelines found within a facility (''intra-facility'').

Given the common understanding of the terms ''flowline'' and ''gathering line'' within the oil production sector, EPA does not believe that it is necessary to propose definitions for these terms under § 112.2. However, EPA requests comments as to whether regulatory definitions for ''flowline'' and ''intra-facility gathering line'' are necessary, and if so, suggestions for an appropriate definition. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

b. Requirements in Lieu of Secondary Containment

The SPCC rule requires secondary containment for all areas of a facility where there is a potential for discharge as described in § 112.1(b). This requirement, found at § 112.7(c), applies to flowlines and intra-facility gathering lines. However, EPA recognizes that providing secondary containment for these pipelines can be difficult and expensive for an owner/operator because these lines are often several miles long, buried, and can extend far from the main facility. Flowlines and intra-facility gathering lines often are placed across land that is not owned by the owner/operator of the oil production facility (e.g., agricultural land), and providing secondary containment for these lines can be difficult, intrusive, or disruptive to the property owner. When flowlines and intra-facility gathering lines are located in farm fields, providing a secondary containment structure may result in soil erosion and negative impacts to the land. Buried flowlines present additional difficulty, because their exact location may be uncertain, especially at an oil production facility that has changed ownership since the original installation of the flowlines.

The Agency is responding to the concerns described above by proposing tailored relief in an effort to improve compliance and enhance environmental protection. EPA believes that secondary containment is, in most cases, impracticable for flowlines and intra-facility gathering lines. Therefore, EPA is proposing an amendment to § 112.7(c) that would remove secondary containment requirements for flowlines and intra-facility gathering lines at an oil production facility, and instead require implementation of an oil spill contingency plan in accordance with 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans) and a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful, without having to make an impracticability determination for each piece of piping. This new requirement would be found in proposed revisions to § 112.9(d)(3). It should be noted that the use of a contingency plan does not relieve the owner/operator of liability associated with an oil discharge to navigable waters or adjoining shorelines that violates the provisions of Section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3).

In the preamble to the 2002 amendments (67 FR 47042, July 17, 2002), EPA discusses how any facility owner/operator who makes a determination of impracticability and has submitted a Facility Response Plan (FRP) under § 112.20 has satisfied the contingency planning requirement, because an FRP is more comprehensive than a contingency plan under 40 CFR part 109. Similarly, the Agency believes that the owner or operator of an oil production facility who has prepared an FRP would satisfy the contingency planning requirement for flowlines and gathering lines. If such a facility owner/operator has already developed an FRP to comply with § 112.20, then he or she would not need to also develop a contingency plan in accordance with 40 CFR part 109. However, the facility owner or operator would still be required to comply with the revised flowline/intra-facility gathering line maintenance program requirements proposed in this notice.

Finally, EPA acknowledges that given the characteristics of certain intra-facility gathering lines, these pipelines may be regulated under requirements of both EPA and DOT. Because DOT requirements for pipelines may be similar in purpose and scope, EPA recognizes that compliance with DOT requirements (e.g., 49 CFR part 194) for these gathering lines may be considered to satisfy the contingency planning requirement.

EPA requests comments on whether exempting flowlines and intra-facility gathering lines from the secondary containment requirement is appropriate, and whether the provision for a contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful is an adequate alternative measure. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. Flowline and Intra-Facility Gathering Line Maintenance Program

EPA recognizes that a contingency plan provides environmental protection in response to a discharge, but in order to implement such a plan, a discharge detection mechanism is necessary. Furthermore, EPA believes that with the elimination of the requirement for secondary containment, it is important to provide more prescriptive requirements for discharge prevention to ensure the integrity of the primary containment of the pipe. EPA believes that a strong program of flowline or intra-facility gathering line maintenance will provide additional preventative measures for these pipelines and increase discharge detection ability.

The current SPCC requirement to have a program of flowline maintenance, found at § 112.9(d)(3), is general in nature and offers the facility owner/operator a great deal of discretion in determining how best to prevent discharges from each flowline. The regulated community has expressed its desire for guidance on how to develop such a program. At this time, EPA is not aware of any industry standard for flowline maintenance. In the SPCC *Guidance for Regional Inspectors* (version 1.0, November 28, 2005), EPA provides a description of the elements that a comprehensive piping maintenance program should include, based on practices recommended by industry groups.

As stated in the SPCC *Guidance for Regional Inspectors*, a flowline maintenance program aims to manage the oil production operations in a manner that reduces the potential for a discharge. Common causes of such discharges include mechanical damage (e.g., impact, rupture) and corrosion. A maintenance program usually combines careful configuration, inspection, and ongoing maintenance of flowlines and associated equipment to prevent and mitigate a potential discharge.

EPA is now proposing to move the requirement for a flowline maintenance program to § 112.9(d)(4), add specificity to the provision, and to clarify that the requirement applies to intra-facility gathering lines, as well as flowlines at an oil production facility. Intra-facility

gathering lines pose the same potential for discharge as flowlines; EPA never intended to regulate the two types of piping differently.

EPA proposes § 112.9(d)(4) to require a performance-based program of flowline/intra-facility gathering line maintenance that addresses the facility owner/operator's procedures, and is documented in the SPCC Plan, to:

• *Ensure that flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids and their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment.* This preventative measure is intended to help preserve the integrity of the lines and reduce the potential effects of corrosion or other factors that may lead to a discharge.

• *Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b).* The frequency and type of testing must allow for the implementation of a contingency plan as described under 40 CFR part 109. This measure is intended to ensure that any discharges, potential problems or conditions related to the flowline/intra-facility gathering line that could lead to a discharge will be promptly discovered; the Agency believes that an oil spill contingency plan cannot be effective unless the discharge is discovered in a timely manner so that the oil discharge response operations described in the contingency plan may be implemented. The proposed inspection requirements are consistent with the requirements for aboveground valves, piping, and appurtenances at non-production facilities under § 112.8(d)(4), which include regular inspection and assessment of the general condition of associated appurtenances such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, valve locks, and metal supports. The Agency notes that due to changes in flowrates and corrosivity of production fluids over time in an oil field, the frequency of inspection may need to change over the lifetime of the well in order to prevent discharges. For buried piping, a facility owner or operator would develop an inspection program to identify evidence of leaks at the surface or other conditions that which may lead to a discharge to navigable waters or adjoining shorelines.

• *Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.* EPA intends for this proposed requirement to be implemented in conjunction with the proposed requirement for periodic inspection and testing; the results of the inspection or test would inform the owner/operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure is intended to prevent discharges as described in § 112.1(b) by ensuring that flowlines and intra-facility gathering lines are well maintained.

• *Promptly remove any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.* EPA recognizes the importance of removing oil accumulations to prevent a discharge as described in § 112.1(b). Section 311(j)(1)(C) of the CWA provides EPA with the authority to establish procedures, methods, and equipment and other requirements to prevent discharges of oil from onshore and offshore facilities. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, State, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).

Consistent with the current flowline maintenance program requirements, the proposed amendments to the maintenance program requirements would be subject to the environmental equivalence provision found at § 112.7(a)(2). That is, the facility owner/operator may deviate from the requirements if an environmentally equivalent alternate measure is implemented instead. EPA recognizes that other Federal or State requirements may be environmentally equivalent to certain SPCC requirements, including the proposed flowline and intra-facility gathering line maintenance program requirement. An environmental equivalence determination is subject to review and certification by a PE. A Tier I qualified facility, as described in this proposal, would not be able to use environmentally equivalent measures and therefore would need to comply with the flowline/intra-facility gathering line maintenance program requirements as outlined above.

While no industry standard for a flowline or intra-facility gathering line maintenance program currently exists, EPA acknowledges that in the future, an industry standard may be established. If such an industry standard is developed, the certifying PE would be able consider whether compliance with that standard is environmentally equivalent to the requirements of the proposed § 112.9(d)(4). Additionally, for a facility owner/operator that has installed, or chooses to install, secondary containment systems for flowlines or intra-facility gathering lines, such measures are likely to be considered environmentally equivalent to one or more of the proposed maintenance program requirements.

Additionally, EPA acknowledges that given the characteristics of certain intra-facility gathering lines, these pipelines may be regulated under requirements of both EPA and DOT. Because DOT requirements for pipelines may be similar in purpose and scope, EPA recognizes that compliance with DOT requirements (e.g., 49 CFR part 195) for these gathering lines may be considered by the certifying PE to be environmentally equivalent alternatives to certain SPCC requirements associated with oil production facility piping.

Similarly, EPA recognizes that state requirements governing flowlines and gathering lines may be environmentally equivalent to certain SPCC requirements applicable to flowlines and gathering lines. In accordance with the Memorandum of Understanding between the Interstate Oil and Gas Compact Commission and the U.S. Environmental Protection Agency, signed in 2002, and renewed in 2005 and 2007, the Agency intends to continue regulatory cooperation among the states and EPA that promotes protection of the environment in a cost-effective manner, and minimizes duplication.

EPA requests comments on whether the proposed requirements for a flowline/intra-facility gathering line maintenance program are appropriate, and whether the proposed requirements conflict with state regulatory requirements. Any suggestions must include an appropriate rationale and

supporting data in order for the Agency to be able to consider it for final action.

d. Alternative Options Considered

EPA considered other options to address the impracticability of secondary containment for flowlines and intra-facility gathering lines. EPA considered allowing a contingency plan and strengthened maintenance program requirements as an optional alternative to secondary containment. That is, the secondary containment requirement would remain as a compliance option. This would provide additional flexibility. EPA concluded, however, that since secondary containment for flowlines/intra-facility gathering lines is, in most cases, impracticable and few oil production facilities are likely to use this measure, providing an optional alternative could potentially increase confusion regarding the requirements for these lines. EPA recognizes that given the long lengths and placement of flowlines and intra-facility gathering lines, and the cost of secondary containment for these lines, facilities are more likely to choose a contingency plan with inspection requirements.

The Agency also considered taking no action for flowlines and intra-facility gathering lines, because the owner or operator of an oil production facility already has the ability to determine that secondary containment is impracticable under § 112.7(d). However, EPA recognizes that in most cases secondary containment is impracticable for this type of equipment.

For these reasons, the Agency decided to propose an alternative for secondary containment for flowlines and intra-facility gathering lines. The Agency welcomes comments on these or other alternatives. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

4. Flow-Through Process Vessels

Separation and treating installations at an oil production facility typically include equipment whose primary purpose is to separate the well fluid into its marketable or waste fractions (e.g., oil, gas, wastewater, and solids), and to treat the crude oil as needed for further storage and shipping. Under the current SPCC requirements, separation and treatment equipment are required to have sized secondary containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation (§ 112.9(c)(2)). EPA recognizes that similar flow-through process equipment (i.e., oil-filled manufacturing equipment, such as reaction vessels, fermentors, high pressure vessels, mixing tanks, dryers, heat exchangers, and distillation columns) at a non-production facility is not subject to the more stringent sized secondary containment and inspection requirements required for bulk storage containers; only the general secondary containment requirements at § 112.7(c) apply (71 FR 77276, December 26, 2006). In addition, EPA acknowledges concern among the regulated community regarding the requirement to provide sized secondary containment around heater-treaters, due to a potential fire-hazard if spilled oil collects around the equipment. As a result, EPA is proposing to exempt flow-through process vessels at an oil production facility from the sized secondary containment requirements. However, EPA recognizes that process equipment at a non-production facility, such as at a manufacturing facility, is typically attended during hours of operation. Therefore, there is a greater potential to immediately discover and correct a discharge at a non-production facility than at an oil production facility, which is generally unattended. For this reason, EPA is also proposing to require the inspection of flow-through process vessel components; prompt removal of any oil accumulations, and corrective action should a discharge occur.

a. Examples of Flow-Through Process Vessels

Flow-through process vessels, such as horizontal or vertical separation vessels (e.g., heater-treater, free-water knockout, gun-barrel, etc.), have the primary purpose of separating the oil from other fractions (water and/or gas) and sending the fluid streams to the appropriate container. It is the intended use of this equipment that differentiates flow-through process vessels from bulk storage containers and end-use storage containers, such as produced water containers. Produced water containers store well fluids (which may also contain various amounts of oil) after they have been separated and/or treated, prior to disposal or reinjection. Under this proposal, produced water containers are not considered flow-through process vessels; they continue to be considered bulk storage containers if oil is present.

b. Exemption From Sized Secondary Containment Requirements for Flow-Through Process Vessels

EPA proposes to amend the requirements in § 112.9(c)(2) as follows: ''Construct all tank battery, separation, and treating facility installations, except for flow-through process vessels so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.'' This proposed amendment removes the requirement to provide such sized containment for flow-through process vessels without making an impracticability determination. The general secondary containment requirement of § 112.7(c) would still apply to flow-through process vessels; they must be provided with secondary containment so that any discharge does not escape the containment system before cleanup occurs.

Many oil production facilities currently provide secondary containment berms around the entire tank battery, which includes separators and other treatment installations, including flow-through process vessels, along with oil stock tanks and other bulk storage containers. Such a facility design is appropriate and EPA encourages oil production facility owners and operators to continue this practice to provide the maximum environmental protection. However, under this proposal, it would no longer be necessary to locate flow-through process vessels within a secondary containment system sized for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

The Agency requests comments on the proposal to exempt flow-through process vessels from the sized secondary containment requirements. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. Additional Requirements for Flow-Through Process Vessels

Because oil production facilities are typically unattended during the hours of operation, EPA is also proposing to add a provision at § 112.9(c)(5)(i) through (iii) to provide additional requirements for flow-through process vessels. These additional requirements would include periodic inspection and/or testing, corrective action, and prompt removal of any oil accumulations.

The proposed amendment to require periodic inspection and/or testing of the flow-through process vessels and associated appurtenances on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b) is intended to increase the likelihood that a discharge will be prevented or detected promptly, especially for components such as dump valves, that typically cause spills.

The proposed inspection and/or testing requirements for flow-through process vessels are consistent with the inspection requirements for bulk storage containers under § 112.9(c)(3). EPA recognizes that because oil production facilities are typically unattended and remote and have a constant flow of oil and well fluids, sized secondary containment measures provide environmental protection for any potential discharge. Because EPA is proposing that this equipment be subject to the general secondary containment requirement (§ 112.7(c)) instead of sized secondary containment, EPA seeks to ensure that any leak, or potential for a leak, is detected promptly enough to prevent a discharge of the entire contents of the separation or treating equipment.

EPA is also proposing to require the owner/operator of an oil production facility to correct or repair the flow-through process vessels and any associated components as indicated by regularly scheduled inspections or tests. EPA intends for this proposed requirement to be implemented in conjunction with the proposed requirement for periodic inspection and testing; the results of the inspection or test would inform the owner/operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure is intended to prevent discharges as described in § 112.1(b) by ensuring that separation and treatment equipment are well maintained.

EPA also proposes to require prompt removal upon discovery of any spills, discharges, or accumulations of oil associated with the flow-through process vessels. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, state, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).

The Agency requests comments on these proposed additional requirements (inspections, corrective action, and prompt removal of oil discharges) for flow-through process vessels. EPA also requests comments on whether this approach, a general secondary containment requirement and additional requirements for flow-through process vessels should be an optional compliance alternative, in lieu of sized secondary containment. Under an optional approach, a facility owner or operator could choose whether to provide sized secondary containment for flow-through process vessels, or to provide general containment and comply with the additional requirements. (A facility owner or operator who already provides sized secondary containment for his flow-through process vessels would not be required to comply with the additional requirements, as long as he maintains the sized secondary containment.) Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

d. Secondary Containment Requirements for Flow-Through Process Vessels if Facility Experiences Reportable Discharge

EPA also is proposing a provision at § 112.9(c)(5)(iv) stating that if an oil production facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period, from a flow-through process vessel, then the facility owner or operator must provide sized secondary containment for all flow-through process vessels at the facility within six months from the discovery of the spill(s). When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines, or in connection with specified activities in waters and not the total amount of oil spilled. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism would not be considered toward this requirement.

The discharge criterion proposed in this notice is similar to the provision in § 112.4(a) for discharges that must be reported to the EPA Regional Administrator (RA). Under § 112.4, a facility owner or operator must report certain information to EPA whenever the facility experiences a discharge reportable under § 112.4.

The Agency requests comment on the proposed requirement for providing sized secondary containment for flow-through process vessels following a reportable discharge as described above. EPA also requests comments on whether a facility owner or operator who experiences such a discharge and subsequently provides sized secondary containment for separation and treating facility equipment at the facility should continue to be required to comply with the additional requirements described above (proposed as § 112.9(c)(5)(i) through (iii)). Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

e. Alternative Option Considered

EPA considered another option to address secondary containment for flow-through process vessels. Under this option, EPA would allow a contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful, without the need to develop a written impracticability determination as an optional alternative to all secondary containment requirements for flow-through process vessels. This option would be available for eligible flow-through process vessels: those that have had no discharges of oil reportable to EPA under § 112.4 in the past three years. In addition, this option would require a facility owner or operator to conduct periodic integrity testing of the process vessels and periodic integrity and leak testing of the associated valves and piping.

EPA recognizes that this alternative to secondary containment would provide flexibility. However, EPA also recognizes that a typical oil production facility is remote and/or unattended, and therefore secondary containment is a preferable measure to prevent a discharge to navigable waters or adjoining shorelines in the event of an oil spill than a contingency plan. Some form of general secondary containment is practicable for this type of equipment. Therefore, EPA chose not to propose this option.

The Agency welcomes comments on this alternative or other alternatives to address separation and treatment equipment, while maintaining environmental protection. Any suggestions must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

5. Small Oil Production Facilities

In this proposed rule, EPA has included a number of amendments to

the SPCC requirements that are designed to reduce the burden on oil production facilities, while maintaining protection of the environment. Specifically, EPA is proposing to amend the definition of ''facility'' to clarify the flexibility associated with defining a facility's boundaries; exclude oil production facilities from the loading/unloading rack requirements at § 112.7(h); extend the timeframe by which a new oil production facility must prepare and implement an SPCC Plan; exempt flowlines and intra-facility gathering lines at oil production facilities from all secondary containment requirements, while establishing requirements for a flowline/intra-facility gathering line maintenance program and contingency planning; exempt flow-through process vessels at oil production facilities from the sized secondary containment requirements, while maintaining general secondary containment requirements and requiring additional oil spill prevention measures; clarify the applicability of the rule to containers at a natural gas facility; and clarify the definition of ''permanently closed'' as it applies to an oil production facility. In addition, the Agency is taking comment on a number of approaches regarding the management of produced waters at oil production facilities.

The regulated community has expressed particular concern regarding the regulation of small oil production facilities under the SPCC rule, suggesting that the cost of complying with the SPCC requirements is disproportionate to the risk these small facilities pose to the environment. While EPA is sensitive to these concerns, the Agency believes that spills from small oil production facilities have and can continue to pose a threat of an oil discharge to navigable waters and adjoining shorelines, and that smaller oil production facilities should remain subject to the SPCC rule.

In evaluating the appropriate application of the SPCC rules to these facilities, the Agency is guided by Executive Order 13211, which directs federal agencies to evaluate and respond to effects that governmental regulatory action can have on the supply of energy (Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001)).[3] Accordingly, the Agency believes it is appropriate to consider the impacts of existing regulations on the energy sector and to identify regulatory alternatives that reduce those impacts when implementing the statutory authorization of Section 311(j)(1)(C) of the Clean Water Act at oil production facilities.

While assessing opportunities for tailoring and streamlining the SPCC requirements, EPA considered whether there are alternative regulatory approaches to Section 311(j)(1)(C) for small oil production facilities that would further reduce the compliance burden associated with the current rule requirements, while still maintaining protection of human health and the environment. In particular, EPA considered regulatory alternatives for oil production facilities that have wells that produce 10 barrels or less of crude oil per day and are known as ''stripper wells.'' [4]

The owner or operator of an oil production facility generally provides adequate container capacity at his facility to ensure sound and continuous operations, and so that a container will not overfill if there is a delay in the removal of oil from the tanks. This practice would meet the SPCC rule provisions at § 112.9(c)(4) to prevent overfills from the containers. However, this practice may prevent some small oil production facilities from being eligible for the burden reduction available to qualified facilities because they would likely have greater than 10,000 gallons in aggregate aboveground oil storage capacity. Therefore, the Agency is requesting comment on an approach described below that identifies specific criteria for an oil production facility that produces oil from a limited number of stripper wells to be considered a qualified facility, notwithstanding the tank storage capacity at the facility. The approach has been shaped by the specific characteristics of this category of facilities and, as such, could result in the application of SPCC requirements in a manner better suited to these facilities. In addition, the Agency is also requesting comment on some additional options for reducing the burden on small oil production facilities that have been suggested by the Department of Energy (DOE). Following consideration of public comments received in response to this notice, one or more of these approaches may be finalized as the applicable SPCC requirements for these facilities. Commenters may provide input on variations to these approaches for consideration by the Agency.

a. Alternative Qualified Facility Eligibility Criteria for Oil Production Facilities

This approach is intended as an alternative for oil production facilities to be considered qualified facilities because they do not meet the current qualified facility requirements under 40 CFR 112.3(g). Under this alternative, an oil production facility would be eligible as a qualified facility if it meets the following criteria: (1) The oil production facility must have no more than four wells associated with a single tank battery; (2) all four of the wells must be stripper wells each producing 10 barrels or less of crude oil per day—that is, a tank battery at an oil production facility could not include any non-stripper wells under this option; (3) the facility must have no injection wells; and (4) the facility must not have had a single discharge exceeding 1,000 U.S. gallons or two discharges each exceeding 42 U.S. gallons within any twelve month period in the three years prior to Plan certification. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify a facility owner or operator from the alternative option described above. The owner or operator of an oil production facility could avail himself of the streamlined requirements for a ''qualified facility'' at § 112.6, if the facility meets all four of the proposed criteria, notwithstanding the total aboveground oil storage capacity at the facility. That is, a qualified facility owner/operator would have the option to prepare a self-certified SPCC Plan in lieu of a Plan certified by a PE. An oil production facility owner or operator exercising this option may be required to make available production or shipping records to support his eligibility. Records may be kept under usual and customary business practices, and must be kept for a period of three years, in accordance with § 112.7(e).

EPA based this potential qualified production facility approach on input from the oil production sector regarding concerns for the burden of preparation of a PE-certified Plan for small oil producers. As stated above, EPA notes that this option would be available to those oil production facilities with up to four stripper wells per tank battery; each well producing 10 barrels or less of crude oil per day; and no injection wells or other wells associated with secondary or tertiary recovery techniques. EPA is

[3] The overall effect of the proposed rule is to decrease the regulatory burden on facility owners or operators subject to its provisions. Accordingly, the proposed rule is not a ''significant energy action'' as defined in this Executive Order.

[4] EPA established differentiated requirements for ''stripper wells'' under the Clean Water Act and codified it in 1979. See 40 CFR 435.60. See also Interstate Oil and Gas Compact Commission, 2006: ''Marginal Wells: Fuels for Economic Growth'', p. 4 (defining ''stripper wells'' as wells that produce 10 barrels of oil per day or less).

considering a maximum of four wells per tank battery in identifying a ''qualified oil production facility'' based on discussions with EPA regional personnel and the Texas Railroad Commission who suggest that this number of wells is fairly typical of oil production facilities.[5] EPA, therefore, believes that the maximum of four stripper wells per tank battery adequately captures the smaller operators targeted by the self-certification option. EPA believes that these facilities are less complex than other oil production facilities based on the limited number of wells per tank battery operating at a low flow rate.

As discussed in the preamble to the December 2006 rule amendments, in which EPA finalized the qualified facility approach, the basis for the exemption from the requirement for a PE certification is that facilities with smaller oil volumes tend to be less complex (71 FR 77270, December 26, 2006). The Agency believes that a facility meeting the potential criteria for a ''qualified oil production facility'' as described above (i.e., no more than four stripper wells to one tank battery, no injection wells, and meets the current spill history criterion for qualified facilities) would be less complex than other oil production facilities for the following reasons. At oil production facilities with no more than four wells per tank battery, the flowlines and the stripper well(s) are commonly co-located within the immediate area of the tank battery therefore reducing the length of flowlines. Additionally, it is likely that an oil production facility that meets the proposed qualification criteria would have fewer valves, less piping, smaller separation equipment, and fewer locations where transfers and discharges could occur because there are fewer wells associated with one tank battery.

The underground injection process adds complexity to the design of an oil production facility; consequently, EPA has included a ''no injection wells'' criterion for an oil production facility to qualify for this alternative option. The injection well process adds complexity because the flowlines from a produced water container to the injection wellhead adds valves, pumps and piping to the facility. In addition, the produced water tanks associated with injection may have high level indicators, floats and actuators/switches that further add complexity. At small production facilities, these systems may not be automated due to cost. The design of the production facility is based on the ability to inject the produced water; generally no extra storage capacity is available to contain fluids if there is a failure or system upset. This leads to a greater likelihood of a discharge. Finally, the water in the produced oil/water mixture is usually corrosive, especially if it is saline, leading to a greater potential for discharge from injection equipment as a result of this corrosion which would be present at more complex facilities.

This alternative set of criteria for identifying a qualified oil production facility would only be available to oil production facilities, and not oil drilling or workover facilities. Due to the nature of its operations, a drilling facility has not yet established an oil production flow rate, and thus a well at such a facility cannot be determined to meet the definition of a ''stripper well.'' However, the owner/operator of an oil drilling and/or workover facility considers the capacity of oil that is maintained for his operations to determine applicability of the SPCC rule and therefore may still be eligible for qualified facility status based on the current criteria in § 112.3(g), i.e., the 10,000-gallon total facility oil storage capacity threshold and discharge history criteria.

It should also be noted that under the current regulations, the owner or operator of an oil production facility can make a determination that sized secondary containment is impracticable. The owner or operator of an oil production facility that meets the proposed criteria for a Tier II qualified facility (as described elsewhere in this proposed rulemaking) would still be able to determine that secondary containment is impracticable and implement the alternative measures under § 112.7(d) (i.e., develop a contingency plan and a written commitment of resources and conduct integrity testing of the bulk storage container and associated piping) if a PE certifies that the secondary containment is impracticable, under the ''hybrid'' approach in which a PE certifies a portion of the SPCC Plan.

EPA is requesting comment on this approach, including the specific criteria identified and whether changes to these criteria would properly assess the complexity of such small oil production facilities. This proposed action may provide a reduction in regulatory burden to those oil production facilities with no more than four stripper extraction wells per tank battery that nonetheless is likely to exceed the current qualified facility threshold criterion of 10,000 gallons. For example, the difference in compliance costs between an oil production facility that prepares an SPCC Plan requiring PE-certification and one that can be self-certified is about $950.

EPA is also requesting comment on whether a small oil production facility may be further eligible for the Tier I qualified facility status, as described elsewhere in today's preamble, if the facility meets the criterion proposed in the rulemaking for a Tier I qualified facility—i.e., the facility has no oil storage containers with an individual storage capacity greater than 5,000 gallons, notwithstanding the total aboveground oil storage capacity at the facility. That is, at a Tier I oil production qualified facility, the owner or operator could avail himself of the streamlined Tier I Qualified Facility SPCC Plan template, as found in the proposed Appendix G to the SPCC rule. An owner or operator of an oil production facility qualifying for and opting to use the Tier I Qualified Facility SPCC Plan template would not be able to make an impracticability determination for secondary containment requirements. Instead, the owner or operator may choose the Tier II approach and develop a ''hybrid'' Plan in which the P.E. certifies the portion of the Plan pertaining to impracticability of secondary containment.

Finally, the Agency specifically solicits comment on the number of oil production facilities that would be able to take advantage of this approach.

b. Alternative Approaches for Addressing Small Oil Production Facilities as Suggested by the Department of Energy (DOE)

The Department of Energy (DOE) requested that the Agency seek input on several approaches that DOE believes may be more suited to address the concerns of small oil production facilities. One approach would have different eligibility criteria to enable the owner or operator of a small oil production facility to be considered a ''qualified facility'' under § 112.6, and allow for the development of a self-certified SPCC Plan, or a ''Tier I Qualified Facility,'' and allow the use of a streamlined SPCC Plan template, similar to that found in the proposed Appendix G to the SPCC rule. Under the existing qualified facilities criteria at § 112.3(g), a facility that has an

[5] EPA assumed an average of four wells per tank battery at a facility to estimate the number of oil production facilities that are subject to the SPCC requirements (see *Regulatory Impact Analysis for the Proposed Amendments to the Oil Pollution Prevention Regulations*). DOE also conducted an analysis of the impact of the SPCC rule on the oil production sector and assumed an average of three stripper wells per oil production facility.

aggregate aboveground storage capacity of 10,000 gallons or less and has not had a single discharge exceeding 1,000 U.S. gallons or two discharges each exceeding 42 U.S. gallons within any twelve-month period in the three years prior is eligible for the qualified facility Plan requirements at § 112.6 (i.e., a self-certified Plan in lieu of a PE certified Plan). DOE suggests that because of the unique characteristics of small oil production facility operations, such facilities may merit the establishment of small oil production facility-specific eligibility criteria, including a different aggregate oil storage capacity threshold [6] or stripper well definition [7] for identifying qualified facilities. In light of this request, EPA seeks comment on whether there are unique circumstances at small or marginally economic oil production facilities and the alternative criteria based on these circumstances for the possible establishment of a ''qualified facility'' provision specific to small oil production facilities that would serve to increase SPCC compliance and reduce the likelihood of a harmful oil discharge. Any alternative approaches submitted must include an appropriate rationale in order for the Agency to be able to consider it for final action.

The other approach DOE requested that EPA take comment on is to outright exempt existing stripper oil and natural gas wells from all SPCC requirements, except those applicable to crude oil and condensate tanks (e.g., tanks which store gas condensate (which is an oil) at oil and gas production facilities). The eligibility criteria for the exemption would include those facilities that meet the Internal Revenue Service (IRS) Tax Code definition of stripper well property at 26 U.S.C. 613A, which defines a stripper well property, with respect to any calendar year, as any property producing 15 barrel equivalents or less per day, where this rate is calculated by dividing:

(i) The average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

(ii) The number of such wells.

DOE, states and industry have raised concerns that the SPCC regulation has the potential to result in the premature abandonment of stripper wells. They argue that stripper wells are marginally economic and can be particularly burdened by increased regulatory compliance and other operating costs. These wells are often operated by small independent producers in mature oil and gas producing regions, have low oil productivity and low oil volumes, and thus could be viewed as presenting a low oil spill risk. According to DOE, stripper wells are vital to sustaining production from conventional oil and natural gas resources in the United States. More than 321 million barrels of oil and 1.7 trillion cubic feet of natural gas were produced from stripper wells in 2005, representing 17 percent of domestic oil production and 9 percent of domestic natural gas production respectively. The Interstate Oil and Gas Compact Commission has estimated that if oil production from stripper wells active in 2005 did not exist, imports would have to increase 6.7 percent to make up for this shortage.[8]

Eligibility criteria for relief would not be limited to the presence of injection wells or the use of secondary and tertiary recovery techniques which are common in more mature oil and gas producing regions. DOE has commented that such criteria have no direct relationship to the spill risk posed by marginal well facilities and may serve as a disincentive to enhanced oil and gas recovery and well maintenance. Production and injection operations for disposal or enhanced recovery may be regulated under existing Federal and State regulatory programs, e.g., under Clean Water Act NPDES, Safe Drinking Water Act underground injection control, and state production or environmental permits to reduce or manage pollutants that could be introduced into the environment. For NPDES and underground injection control, these regulatory programs are intended to address the discharge of known pollutants that are to be introduced to navigable waters (in the case of NPDES) or to underground sources of drinking water (in the case of UIC). In contrast to these measures, SPCC is designed to prevent the non-routine accidental discharge of oil that might be held in an oil container at a facility. DOE has suggested that these regulations may accomplish certain SPCC objectives in a different manner, such as prohibiting pollution or unlawful discharges rather than requiring an SPCC Plan. Therefore, the Agency specifically solicits comment on the extent that these regulatory programs, particularly state production or environmental permits, address the objectives of the SPCC rules, and if so, how they are achieved. Finally, EPA would note that under this approach, new facilities and existing non-marginal facilities would not be exempted from the SPCC regulation, but once their production declines below the marginal level as defined above, these wells would be excluded from continuing or periodic SPCC requirements under this approach.

EPA requests comments on the scope of a stripper well exemption, including the eligibility criteria, and whether such an exemption can reduce the regulatory burden on marginally economic properties while protecting the environment. Any alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider these for a final action.

6. Produced Water Storage Containers

At an oil or natural gas production facility, ''produced water'' is the oil and water mixture resulting from the separation of marketable crude oil from the fluid extracted from the geological formation. Produced water chemical and physical characteristics vary considerably depending on the geologic formation, usually being commingled with oil and gas at the wellhead, and changing in composition as the oil or natural gas fraction is separated and sent to market. The management of produced water may typically entail the use of separation and treatment process vessels, tanks both near the point of separation and at the point of its disposal or reuse (e.g., in an injection well for disposal or enhanced oil recovery, discharge to a stream, or agricultural water resource), and flowlines and gathering lines.

In the current SPCC rule, the term ''bulk storage container'' is defined as ''any container used to store oil.'' EPA considers a produced water container that also contains oil to be a bulk storage container, and therefore subject to applicable provisions under § 112.9(c). Produced water containers are typically located within a tank battery at a production facility where they are used to store well fluids after separation and prior to subsequent use (e.g., re-injection or re-use), further treatment, or disposal. Because the separation process is not completely effective, under normal operating conditions, a layer of oil may be present above the produced water in the container. The amount of oil by volume observed in produced water storage containers varies, but based on EPA's assessment, is generally estimated to range from less than one to

[6] The Oklahoma Independent Petroleum Association and the Independent Petroleum Association of America suggest an aggregate oil capacity threshold of 50,000 gallons.

[7] DOE suggests that a stripper well be defined using the Internal Revenue Service (IRS) tax code definition of 15 barrels or less of oil per day equivalence (see 26 U.S.C. 613A).

[8] See Interstate Oil and Gas Compact Commission, 2006: ''Marginal Wells: Fuels for Economic Growth.''

up to ten percent, and can be greater. This estimate is based on a review of National Response Center (NRC) spill reports, observations from EPA inspectors, and comments made by industry representatives and the accompanying document ''*Consideration for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasures Regulation*'' (May 30, 2007), in the docket for today's rulemaking. The Department of Energy (DOE) and the industry believe that the oil layer may be much less.

Many production sites operate in geographically remote areas and are typically unattended. At these production sites, fluids extracted from the well flow through the production and separation equipment and into various storage containers provided at the facility. The produced water storage containers are usually the last containers in the separation process stream where fluids accumulate; consequently, produced water containers are a potential source of discharge due to overfill when there is an upset in operations (e.g., such as separator failure) or when an operator is delayed in making a scheduled visit to the facility to empty the produced water containers. In an overfill situation, the oil floating at the surface of the water may be first to be discharged, followed by water which could serve to transport the oil for longer distances. Oil discharges to navigable waters or adjoining shorelines from an oil/water mixture in a produced water container may cause harm. Such mixtures are regulated as oil under the SPCC rule.

The regulated community has expressed concern regarding the regulation of produced water containers under the SPCC rule, suggesting that the cost of complying with the SPCC requirements is disproportionate to the risk these containers pose to the environment. For this reason, EPA is considering whether there are regulatory options for produced water containers that can protect the environment at lesser cost than the current rule requirements along with the amendments proposed in this action. The Agency is requesting comments on three options, as described below.

EPA requests comment on the characteristics of produced water containers at production facilities that may uniquely distinguish these containers from containers used at other types of facilities that hold oil mixtures. EPA also requests comment on whether the approaches outlined below appropriately address industry concerns, while protecting the environment. In particular, EPA requests comment on an approach that would require general secondary containment combined with additional requirements in lieu of sized secondary containment. A second approach, advanced by DOE, would require inspection, maintenance, and periodic oil skimming of produced water storage containers in lieu of both sized and general secondary containment.

Finally, comment is requested on whether a third approach, advanced by DOE, that exempts produced water treatment facilities altogether would be appropriate. In connection with this approach, the regulated community and DOE have suggested that produced water containers should be exempt from all SPCC requirements, arguing that these containers have only incidental amounts of oil and a low risk of discharge. Published data used to establish national effluent limitations for coastal oil and gas production facilities show that the oil content of produced water in tanks after initial separation is low, e.g., averaging 50 parts per million, with a maximum of 200 parts per million in samples taken.[9]

Data EPA received in the past suggest that produced water containers may hold up to 10% of free-phase oil floating on the surface of the produced water. EPA is asking that commenters provide additional data on the amount of oil commonly observed in produced water containers. EPA is primarily interested in data on the amount of free-phase oil present in produced water containers, for example as a layer of oil floating at the surface of the produced water, rather than oil present in solution, suspension or emulsion within the produced water mixture. EPA also requests comment, and supporting data, on the efficiency of oil and water separation and treatment at onshore production facilities, how the efficiency of oil-water separators changes over time as equipment ages and production of oil from the formation evolves, the efficiency of oil skimming on oil volume, and the frequency and consequences of equipment failure. Finally, EPA requests data on oil spills, the source, and the cause of such oil spills from these produced water containers.

Any suggestions on alternative approaches must include an appropriate rationale and information and data in order for the Agency to be able to consider it for final action.

[9] SAIC, 1993, draft ''Coastal Oil and Gas Production Sampling Summary Report'' April 30, and SAIC 1994, ''Statistical Analysis of Effluent from Coastal Oil and Gas Extraction Facilities'' September 30.

a. General Secondary Containment, Inspection, Integrity Testing & Maintenance of Produced Water Bulk Storage Containers

One approach on which EPA requests comment would allow an owner/operator of a production facility to comply with the general secondary containment requirements along with additional measures for existing produced water containers as an option in lieu of the current regulatory requirement for sized secondary containment for these containers. That is, a production facility owner/operator would provide general secondary containment and comply with additional measures for existing produced water containers, or the owner/operator could choose to comply with the current sized secondary containment requirements for produced water containers and not be subject to the new additional set of measures. Under this approach, an owner/operator that chooses to carry out additional measures in addition to the general secondary containment requirement for existing produced water containers (see § 112.7(c)) would be exempted from the sized secondary containment requirement at § 112.9(c)(2). The general secondary containment requirements (§ 112.7(c)) apply to all parts of a facility that could be involved in a discharge. If an owner or operator has already provided sized secondary containment for the facility produced water bulk storage container, the owner or operator may choose not to select this new option. EPA expects many operators may be in this situation, as a recent DOE report stated that over two-thirds of produced water tanks ''were assumed to be already contained within existing SPCC Plans and have secondary containment.'' [10]

This approach would be limited to existing produced water containers because this approach is intended to balance the cost of retrofitting existing containers with EPA's belief that sized secondary containment is the most effective method to prevent oil discharges from these containers. Existing produced water containers would be those at oil production facilities in operation on the effective date of the final rule addressing this approach. Newly constructed oil

[10] See ''*Assessment of the Potential Costs and Energy Impacts of Spill Prevention, Control, and Countermeasure Requirements for U.S. Oil and Natural Gas Production*'' prepared for U.S. DOE Office of Fossil Energy by Advance Resources International, Inc., August 17, 2006 (Revised). Available at *http://www.fossil.energy.gov/programs/oilgas/publications/environment_otherpubs/SPCC_Impact_Exploration_and_Production_8.pdf*.

production facilities and newly installed produced water containers at existing facilities would not be eligible to use these alternative measures in lieu of sized secondary containment because it is EPA's best professional judgment that because construction crews and equipment are already present at a facility during the installation of new produced water containers, the incremental cost for adding/installing sized secondary containment for these containers would not be significant.

In addition, if a facility experiences a discharge reportable to EPA under § 112.4, then sized and general secondary containment would be required for all produced water containers at the facility within six months from the discovery of the spill(s).[11] When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines, or in connection with specified activities in waters and not the total amount of oil spilled. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify a facility owner or operator from the alternative measures described above.

To maintain environmental protection under this approach, the following additional measures for produced water containers would be required:

• *Periodic inspections on a regular schedule of equipment and appurtenances that typically cause spills from produced water containers (e.g. piping, valves, pumps and the container itself).* A requirement for periodic inspection of the produced water containers and associated appurtenances on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b) would increase the likelihood that a discharge will be prevented or detected promptly, especially for appurtenances that typically cause spills. Inspection of produced water containers and appurtenances would be consistent with the inspection requirements for bulk storage containers under § 112.9(c)(3). Facilities would outline, in writing, procedures for routine inspection and keep records of these inspections in accordance with § 112.7(e).

• *Conduct a condition examination*[12] *and integrity testing of produced water containers on a regular schedule and after completing material repairs.* In lieu of the protection offered by sized secondary containment, this approach would require a formal integrity inspection/condition examination of the produced water bulk storage container(s) on a regular schedule. The frequency, inspector qualifications and the scope of the inspections, integrity testing, and condition examinations must be in accordance with good engineering practice and documented in the SPCC Plan. For condition examinations and integrity testing, the industry recommended practices for tanks in production service provide the scope and frequency of examinations necessary to ensure the suitability of tanks for continued service, based on the type of tank, fluid stored, and service conditions. For an example of such practices, a facility owner or operator may refer to American Petroleum Institute, Recommended Practice 12R1, fifth edition, August 1997. These practices include the routine visual operational examination of produced water bulk storage containers by facility personnel according to written procedures, and external and/or internal condition examination of these same containers according to a schedule and following an operational alert, malfunction, or other condition noted during the routine operational examination. The external condition examination[13] would cover the tank exterior, and check for leaks, shell distortion, and evidence of corrosion; it would also look at the condition of the foundation, pad, drainage, coatings, appurtenances and connections. The internal condition examination would check for leaks, shell distortion, cracks, condition of any internal coating, and evidence and severity of internal corrosion. The external and internal condition examinations would be complemented by integrity testing (e.g., using non-destructive evaluation methods, such as ultrasonic thickness measurements of the shell) used to assess the suitability of the container for continued production service, as appropriate for the type of container. Facilities would outline in writing procedures for routine visual examination, external condition examination, internal condition examination, and integrity testing and keep records of the examinations and testing in accordance with § 112.7(e).

• *Prompt removal of any oil discharges from produced water containers and appurtenances.* This approach also would require prompt removal upon discovery of any spills, discharges, or accumulations of oil associated with the produced water containers. EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, State, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, state or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).

• *Corrective action to repair or replace any container, or associated equipment and appurtenances in order to prevent a discharge from occurring, as well as in response to a discharge.* Finally, this approach would require the owner/operator of an oil production facility to take corrective action to repair any produced water container, and associated equipment and appurtenances as indicated by regularly scheduled inspections or tests. This requirement could be implemented in conjunction with the requirement for periodic inspection and testing; the results of the inspection or test would inform the owner/operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure would prevent discharges as described in § 112.1(b) by ensuring that produced water containers are well maintained.

In evaluating this potential regulatory approach, the Agency examined oil production operations as they relate to the storage, treatment, and handling of these oil/water mixtures. EPA conducted a study of the exploration and production sector (see *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (May 30, 2007), in the docket

[11] See the similar discussion in Section V.L.4 of this proposal pertaining to flow-through process vessels.

[12] ''Condition examination'' is defined in API Recommended Practice 12R1 as a review of history and physical observation of a tank and its adjacent equipment by a competent person.

[13] API Recommended Practice 12R1 provides guidelines on developing the scope of a program for condition examination and integrity testing for tanks at production facilities. While the RP does not include mandatory requirements, this approach would include a mandatory requirement to conduct a condition examination and integrity testing for produced water containers.

for this rulemaking). In this study, EPA reviewed the spills reported to the National Response Center (NRC) during calendar years 2000 through 2005. The NRC spill reports specifically attribute 3% of the spill incidents from oil production facilities to produced water containers. Some of the spill incidents attributed to unspecified tank batteries (4%) or unspecified tanks (6%) may also involve produced water containers. Based on these reports, 5% of the volume of oil spills from oil production facilities is attributed specifically to produced water containers, 6% is attributed to unspecified tank batteries, and 20% is attributed to unspecified tanks. The NRC reports also attribute 3% of the spill incidents to water disposal, which is 16% of the total volume of oil and oil mixtures discharged from oil production facilities. The NRC data does not show the ratio of oil and water in spills. Incidents associated with water disposal may involve produced water containers, although the review found that water disposal piping frequently suffers from corrosion damage and accidental impacts and incidents associated with water disposal may also be associated with the water disposal piping. Based on the information reported to the NRC, the most common causes of oil spill incidents from oil production facilities were equipment failure (18%), corrosion (20%), and leaks, holes and ruptures (20%). Twenty-four percent of the spill reports have unspecified causes.

Many onshore production facilities already locate produced water containers within the same containment structure as other oil containers, and size this containment structure to the capacity of the largest oil container plus freeboard for precipitation. Therefore, those oil production facilities that include sufficient containment already meet the existing sized secondary containment requirement and would not need to comply with these additional measures. A review of spill incident reports from the NRC and selected state data sources shows that containment structures are an effective means of containing oil spills within the facility and preventing discharges to navigable waters and adjoining shorelines.

EPA requests comment on whether this approach, an exemption from the sized secondary containment requirement, with additional measures for produced water containers (including integrity testing and condition examinations), appropriately addresses industry concerns, while preserving environmental protection. Additionally, EPA requests comment on whether there are other measures that should be considered in developing this alternative approach in lieu of the sized secondary containment requirements. Finally, as EPA previously indicated, the Agency also requests comment on the characteristics of produced water containers at production facilities that may uniquely distinguish these containers from containers used at other types of facilities to hold oil mixtures.

b. Inspection and Maintenance of Produced Water Storage Containers

DOE has requested that EPA take comment on a second approach which would allow an owner/operator of a production facility to comply with additional measures for produced water storage containers in lieu of both sized and general secondary containment requirements. That is, a production facility owner/operator would be able to comply with these specific tailored measures for produced water containers, or the owner/operator could choose to comply with the current sized secondary containment requirements for produced water containers and not be subject to an additional set of measures. Under this approach, an owner/operator that chose to comply with these tailored requirements would be exempted from the sized secondary containment requirement at § 112.9(c)(2) and the general secondary containment requirements at § 112.7(c).

However, if a facility experiences a discharge reportable to EPA under § 112.4, then sized and general secondary containment would be required for all produced water containers at the facility within six months from the discovery of the spill(s).[14] When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines, or in connection with specified activities in waters and not the total amount of oil spilled. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify a facility owner or operator from using these tailored requirements in lieu of sized and general secondary containment.

This approach is based on input DOE received from the production sector that suggested that an inspection and maintenance approach may be more appropriate for these containers. Additionally, DOE believes that the volume of oil in the storage container can be significantly reduced further after separation by periodic skimming of the oil layer that may reside in the top of the container.

To maintain environmental protection under this approach, the following additional measures for produced water containers would be required:

- *Visually inspect on a regular schedule the equipment and appurtenances which typically cause spills from produced water containers (e.g., piping, valves, pumps, and the container itself) to assess the suitability of the equipment for continued service, as appropriate for the type of fluids.* Facility owners and operators must outline in writing procedures for routine visual inspection and keep records of these inspections in accordance with § 112.7(e).
- *Implement a program to periodically skim the fluids in the produced water container as necessary to prevent an oil layer that would increase the potential for a discharge of oil as described in § 112.1(b).* The skimming program must be appropriate for the fluids stored, the rate of production, the container size, and the facility configuration.
- *Promptly remove any oil discharges from produced water containers and appurtenances.* This approach would require prompt removal upon discovery of any spills, discharges, or accumulations of oil associated with produced water containers that are subject to these tailored requirements. As noted previously, EPA considers the removal of oil-contaminated soil as a method to prevent oil from becoming a discharge as described in § 112.1(b). Disposal of oil must be in accordance with applicable Federal, State, and local requirements; under § 112.7(a)(3)(v), a facility owner or operator is required to describe the methods of disposal of recovered materials in accordance with applicable legal requirements. For the purposes of this provision, removal of recoverable oil may be combined with physical, chemical, and/or biological treatment methods to address any residual oil. These treatment methods must be consistent with other Federal, State, or local requirements as applicable, and must be properly managed to prevent a discharge as described in § 112.1(b).
- *Corrective action to repair or replace any produced water container, or associated equipment and appurtenances in order to prevent an oil discharge from occurring, as well as in response to a discharge.* This approach would require the owner or operator of an oil production facility to take corrective action to repair any produced water container and associated

[14] See the similar discussion in Section V.L.4 of this proposal pertaining to flow-through process vessels.

equipment or appurtenances as indicated by regularly scheduled inspections. This requirement could be implemented in conjunction with the requirement for periodic inspection; the results of the inspection would inform the owner or operator of any corrections or repairs that need to be made. Corrective action is necessary in order to prevent a discharge from occurring, as well as in response to a discharge. This measure is intended to prevent discharges as described in § 112.1(b) by ensuring that produced water equipment is well maintained.

The requirement for periodic inspection of produced water equipment on a regular schedule is intended to increase the likelihood that a discharge as described in § 112.1(b) will be prevented or detected promptly. The inspection requirements for produced water equipment would be consistent with the inspection requirements for oil containers at oil production tank batteries under § 112.9(c)(3). The requirement for periodic skimming of the container should reduce the impact of a spill by limiting the amount of oil held in a produced water storage container.

The Agency seeks comments on this approach, including comment on the proper methodology, procedures, industry standards/practices, equipment and frequency for an oil ''skimming program.'' Any suggestions on alternative approaches or language must include an appropriate rationale in order for the Agency to be able to consider it for final action.

c. Exemption for Produced Water Treatment

Due to several factors including the growing interest in produced water for beneficial uses, and the understanding that the increased use of produced water for beneficial uses will reduce the potential for oil spills, DOE also requested that EPA consider alternatives to current SPCC requirements for produced water at oil and natural gas operations. In the July 2002 (67 FR 47139; July 17, 2002) amendments to the SPCC rule under § 112.1(d)(6), EPA exempted wastewater treatment facilities or parts thereof from the SPCC rule. In the amended regulation, EPA defined wastewater treatment as not including oil production, recovery, or recycling of oil, and clarified that treatment of produced water was not considered wastewater treatment.

Since the 2002 amendments were issued, industry, states, and DOE have commented on the low incremental environmental benefit of regulating produced water under the SPCC regulation. Concern has also been expressed by the regulated community regarding the perceived inequity of the SPCC regulation relative to oil production wastewater treatment, because the wastewater treatment facilities of publicly owned treatment works and other industries were exempted from the SPCC rule in 2002. Therefore, DOE has requested that EPA request comment on an exemption from the SPCC rule for produced water altogether, similar to that previously provided to wastewater treatment systems.

Produced water treatment facilities or parts thereof may be subject to the National Pollutant Discharge Elimination System (NPDES), Safe Drinking Water Act (SDWA), Underground Injection Control (UIC), or State permitting requirements that limit the level of pollutants in produced water that could be introduced into the environment. For example, under 40 CFR 122.41(e), NPDES permits require permittees to properly operate and maintain all facilities and systems of treatment or control. 40 CFR 122.41(d) requires the NPDES permit holder to take all reasonable steps to minimize or prevent any discharge in violation of a permit that has a reasonable likelihood of adversely affecting health or the environment. Underground sources of drinking water are protected under 40 CFR 144.12, whereby any underground injection, except into wells authorized by rule or authorized by permit issued under the UIC program, is prohibited. These measures are intended to address the discharge of known pollutants contained in water that is to be introduced to water bodies (in the case of NPDES) or to groundwater (in the case of UIC). In contrast to these measures, SPCC is designed to prevent the non-routine accidental discharge of oil that might be held in an oil container at a facility.

Produced water treatment facilities or parts thereof are often regulated under state laws and regulations applicable to oil and natural gas production which address operations and pollution prevention. Oil and natural gas operations, including produced water treatment facilities on Federal lands managed by the Department of the Interior Bureau of Land Management are subject to environmental review, lease stipulations, and operational guidelines that include best management practices for reducing environmental impacts.[15]

The characteristics of produced water in the United States vary widely, ranging from produced water that is potable to produced water that can be discharged, injected underground or used as a beneficial water resource following varying levels of treatment to remove oil, salt, or other chemical constituents. Similarly, factors such as high energy prices, advances in water treatment technology, and changing perspectives on the value of produced water for beneficial uses including agriculture irrigation, livestock watering, recreation, aquifer recharge, and enhanced oil recovery are factors that may encourage the industry to separate oil and natural gas fluids from produced water and to manage the produced water in a manner that will reduce oil spills. The docket of this proposed rule contains several documents relating to produced water provided to EPA by DOE.[16]

Therefore, as requested by DOE, EPA seeks comment on an exemption for produced water treatment facilities or parts thereof from the SPCC regulation. At oil or natural gas drilling, production, recovery, or recycling facilities, produced water treatment facilities or parts thereof that would be exempted from SPCC regulation include the storage, treatment, or beneficial use of produced water in containers, pits, ponds, piping, flowlines, and injection or discharge systems including pumps and other appurtenances necessary for the operation of these systems. Specifically, this approach would amend § 112.1(d)(iii)(6) pertaining to the general applicability of the SPCC rule, to read, ''Any facility or part thereof used exclusively for waste water treatment and not used to satisfy any requirement of this part. This would include produced water treatment in oil or natural gas production, recovery, or recycling.''

Produced water managed prior to the initial separation of co-mingled oil or natural gas fluids that are produced

[15] For example, see Argonne National Laboratory, 2007, ''Produced Water Management Information System'' at *http://web.evs.anl.gov/pwmis/* and U.S. Department of the Interior, 2007, Bureau of Land Management Best Management Practices for Fluid Minerals Web site at *http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices.html.*

[16] Relevant documents include:

Interstate Oil and Gas Compact Commission and ALL Consulting, 2006, ''A Guide to Practical Management of Produced Water from Onshore Oil and Gas Operations in the United States.'' Available at *http://www.iogcc.state.ok.us.*

Veil, J.A., M.G. Puder, D. Elcock, and R.J. Redweik, Jr., 2004, ''A White Paper Describing Produced Water from Production of Crude Oil, Natural Gas, and Coal Bed Methane,'' prepared by Argonne National Laboratory for the U.S. Department of Energy, National Energy Technology Laboratory, January. Available at: *http://www.ead.anl.gov/pub/dsp_detail.cfm?PubID=1715.*

from the wellhead would not be exempted from the SPCC regulation.

Whether a produced water treatment facility or part thereof is used exclusively for wastewater treatment (i.e., not storage or other use of oil) or used to satisfy a requirement of part 112 will often be a facility-specific determination based on the activity associated with the facility or part thereof. Only the portion of the facility (including produced water treatment associated with production, recovery, or recycling of oil or natural gas) used exclusively for produced water treatment and not used to meet any part 112 requirement would be exempt from part 112 under this approach. Examples of produced water treatment facilities or parts thereof used to meet a part 112 requirement which would not be part of this exemption include an oil/water separator.

It should also be noted that under this approach, a discharge of produced water containing oil to navigable waters or adjoining shorelines in a ''harmful quantity'' (40 CFR part 110) is still prohibited. Thus, to avoid such discharges, EPA would expect owners or operators to comply with the applicable permitting requirements under Federal or State statutes, including best management practices and operations and maintenance provisions contained therein. EPA would require that if a facility experiences a discharge reportable to EPA under § 112.4, then the facility would no longer be exempt and sized and general secondary containment would be required for all produced water containers at the facility within six months from the discovery of the spill(s).

The Agency seeks comments on whether exempting produced water treatment facilities from the SPCC regulation is appropriate. In particular, EPA requests comment on the rationale for this approach, i.e., the assumption that the oil content of equipment handling produced water (e.g., tanks, piping, and related appurtenances) after initial separation is low. Any suggestions on alternative approaches or language must include an appropriate rationale in order for the Agency to be able to consider it for final action.

7. Clarification of the Definition of Permanently Closed Containers

The SPCC rule exempts from applicability and from capacity threshold determinations any oil storage container that is permanently closed. EPA seeks to clarify concerns expressed by the regulated community over the requirements for permanently closing a container, as described in the definition of ''permanently closed'' at § 112.2. According to the definition, for a container to be permanently closed, all liquid and sludge must be removed from the container and connecting lines, all connecting lines and piping must be disconnected from the container and blanked off, all valves (except ventilation valves) must be closed and locked, and conspicuous signs must be posted on each container stating that it is a permanently closed container and noting the date of closure. Once permanently closed, a container is no longer required to be counted toward the total facility storage capacity, nor is it subject to the other requirements under the SPCC rule.

Variable economic conditions and production rates at an oil production facility may cause certain containers to be unused for long periods of time. Regulated community members have indicated that permanent closure of such containers is undesirable because the requirements for closing a container makes it costly and difficult to return a container to use if production rates surge or if economic conditions become more favorable.

Members of the regulated community have suggested that EPA provide an option to ''temporarily'' close a container, to exempt it from SPCC applicability, but allow it to be returned to service if needed. Specifically, ''temporary closure'' would have less stringent requirements than permanent closure, and would be intended for situations where containers would only be closed for short periods of time. The significant difference in closure requirements between EPA's current ''permanent'' requirements and the suggested ''temporary'' requirements appears to be the removal of liquid and sludge from the container and connecting lines. EPA believes that allowing liquid and sludge to remain in the container, without the benefit of the SPCC rule protections, such as containment and inspection, creates the potential for a discharge. Therefore, EPA does not believe that it is appropriate to exempt containers without requiring that all liquid and sludge be removed.

EPA reiterates the statement that the Agency made in the preamble to the July 2002 amendment to the SPCC rule: ''If a tank is not permanently closed, it is still available for storage and the possibility of a discharge as described in § 112.1(b), remains. Nor does a short time period of storage eliminate the possibility of such a discharge. Therefore, a prevention plan is necessary. A tank closed for a temporary period of time may contain oil mixed with sludge or residues of product, which could be discharged. Discharges from these facilities could cause severe environmental damage during such temporary storage and are therefore subject to the rule.'' (67 FR 47059)

EPA notes, however, that the definition of permanently closed does not require a container to be removed from a facility; permanently closed containers may be brought back into use as needed for variations in production rates and economic conditions. (A facility owner or operator should review state and local requirements, which may require removal of a container when it is taken out service.)

Furthermore, EPA wants to clarify that permanent closure requirements under the SPCC rule are separate and distinct from the closure requirements in regulations promulgated under Subtitle C of the Resource Conservation and Recovery Act (RCRA), i.e., the *Standards For Owners and Operators of Hazardous Waste Treatment, Storage, And Disposal Facilities* at 40 CFR part 264 and *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities* at 40 CFR part 265. These regulations describe the requirements for operators of facilities that use tank systems for storing or treating hazardous waste, as well as requirements for tank closure and post-closure care (§§ 264.197 and 265.197). However, these requirements generally do not apply to an oil production facility. According to the applicability provision in § 264.1(b), ''the standards in this part apply to owners and operators of all facilities which treat, store, or dispose of *hazardous waste*, except as specifically provided otherwise in this part or part 261 of this chapter'' (emphasis added). Part 261 states that ''Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy'' are not hazardous waste (§ 261.4(b)(5)). Therefore, an oil production facility does not have to undergo the expense of permanent closure under part 264 or part 265 of RCRA, because these wastes—that is, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil are not subject to these regulations. In addition, the owner or operator of the oil production facility could transport such wastes to a non-hazardous waste disposal or treatment facility, as opposed to a permitted Subtitle C hazardous waste facility. (The reasons why regulation under Subtitle C of RCRA for wastes associated with oil

production was determined to be unwarranted are described in the **Federal Register** notice ''Regulatory Determination for Oil and Gas and Geothermal Exploration, Development, and Production Wastes'' (July 6, 1988; 53 FR 25446).)

Given the clarifications provided here, EPA does not believe that further regulatory action is needed to address this issue. Nevertheless, EPA welcomes comments on whether further clarification regarding the definition of permanently closed is necessary. Any suggestions for alternative approaches must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

8. Oil and Natural Gas Pipeline Facilities

In developing this proposed rulemaking, questions have been raised concerning the jurisdictional lines between EPA and the Department of Transportation (DOT) in relation to oil and gas pipeline systems and associated equipment. Our objective, in keeping with the Executive Order 12777 and earlier executive orders, as well as the 1971 DOT and EPA Memorandum of Understanding (MOU), is to differentiate between ''transportation'' and ''non-transportation'' facilities in a manner that provides clear and definitive standards, while eliminating regulatory gaps, and overlapping regulation and oversight. To these ends, EPA and DOT have committed to revise or augment their 1971 MOU to more clearly define the jurisdictional scope over oil and gas-related infrastructure by delineating the specific equipment and appurtenances that are part of the pipeline system subject to DOT jurisdiction. In the case of a natural gas pipeline, EPA and DOT will evaluate the appropriate jurisdictional divide for equipment such as compressor stations, lubricating systems and tanks. EPA and DOT have committed to diligently pursue resolution of this issue and, early next year, to make available for public comment the document memorializing the culmination of this effort. EPA, intends to give notice of completion of this process in connection with publication of the final version of this rule by incorporating by reference or otherwise a provision outlining the agencies' relative jurisdiction in this area.

M. Man-Made Structures

The SPCC rule is applicable to a facility that, due to its location, could reasonably be expected to have a discharge of oil as described in § 112.1(b). As described in a 1976 amendment to the rule (41 FR 34164, December 11, 1976), this determination must be based solely upon consideration of the geographical aspects of the facility, and excludes consideration of manmade features such as dikes, equipment, or other structures that may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in § 112.1(b). As EPA noted in the 1976 rule preamble, ''manmade features, such as drainage control structures and dikes, are not to be used in concluding there is no reasonable expectation that a discharge will reach navigable waters. If there is a reasonable expectation that a discharge from the facility would reach navigable waters but for or in the absence of such containment or other structures, the facility is subject to the requirements of this part.'' (41 FR 34164, December 11, 1976). This policy has been an important foundation for the applicability of the SPCC rule for over 30 years.

Although the issue was addressed in 1976, members of the regulated community continue to raise questions regarding the use of man-made structures. In the preamble to the 2002 SPCC rule revisions, EPA responded to comments by explaining that, ''To allow consideration of manmade structures (such as dikes, equipment, or other structures) to relieve a facility from being subject to the rule would defeat its preventive purpose. Because manmade structures may fail, thus putting the environment at risk in the event of a discharge, there is an unacceptable risk in using such structures to justify relieving a facility from the burden of preparing a prevention plan.'' (67 FR 47062, July 17, 2002). However, members of the regulated community continue to suggest that man-made features, such as basements or containment structures, should be taken into consideration when determining whether the SPCC requirements apply.

EPA continues to uphold this applicability criterion, but seeks to clarify that certain man-made features, such as building walls, basement structures, and drainage systems may be taken into consideration in determining how to comply with the SPCC requirements.

1. Secondary Containment

If an oil storage container at a regulated facility is located inside a building, the PE or facility owner/operator certifying the SPCC Plan may take into consideration the ability of the building walls and/or drainage systems to serve as secondary containment for the container. The SPCC regulation is performance-based and provides flexibility to the facility owner or operator in terms of the design and implementation of the secondary containment system that will provide adequate protection. Secondary containment may be achieved by use of dikes, berms, or other barriers, engineered drainage structures, or other active or passive containment methods. The regulation provides general design criteria for secondary containment of bulk storage containers by requiring simply that the containment be of a size sufficient to contain the capacity of the largest container, with freeboard for precipitation, as appropriate. EPA does not require the use of specific sizing criteria to account for precipitation (e.g., 110 percent of capacity); instead it allows the facility owner or operator, or the PE certifying the Plan, to consider location specific conditions, including the possibility that a bulk storage container is located indoors where precipitation does not occur. The SPCC rule also requires that the containment structure provided around bulk storage containers be sufficiently impervious to oil. Therefore, the containment structure must not be equipped with open floor drains unless the drainage system has been purposefully equipped to treat any discharge, for example by use of an adequately sized oil-water separator (any indoor drainage system that leads directly to a sewer authority, Publicly Owned Treatment Works (POTW), or a waterbody may serve as a conduit for a discharge to navigable waters). Additionally, any doorways, windows, or other openings thatwould permit a discharge to flow out of the building must also be taken into consideration. To the extent that an existing building structure meets the SPCC performance criteria for secondary containment, the owner/operator can consider such a building as an appropriate containment structure. In cases where the building walls may be used for secondary containment, it should be noted, that the calculation of the capacity of the secondary containment structure would need to consider the displacement by other containers, equipment, and items sharing the containment structure.

Where applicable, containers may be subject to the National Fire Protection's Flammable and Combustible Liquids Code (NFPA 30) in addition to the SPCC requirements. In these situations, the building may serve as both general and sized secondary containment. For containers located in buildings, NFPA 30 prescribes specific requirements to control fire hazards involving

flammable or combustible liquids, particularly in the areas of design, construction, ventilation, and ultimately facility drainage. More specifically, NFPA 30 requires curbs, scuppers, drains or similar features to prevent the flow of liquids in emergencies to adjacent buildings, including provisions to handle water from fire protection systems. In the area of facility drainage, NFPA 30 requires that a facility be designed and operated to prevent the discharge of liquids to public waterways, public sewers, or adjoining property. Thus, if a facility is designed, constructed and maintained to applicable fire codes, such as NFPA 30, the building may serve as secondary containment under the SPCC rule.

Given the clarifications provided here, EPA does not believe that further regulatory action is needed to address this issue. EPA welcomes comments on whether further clarification regarding the use of building structures to meet the SPCC secondary containment requirements is necessary.

2. Integrity Testing

The SPCC rule requires that bulk storage containers be made of compatible materials and are appropriate for the conditions of storage, such as pressure and temperature (§§ 112.8(c)(1) and 112.12(c)(1)), and are tested for integrity on a regular schedule (§§ 112.8(c)(6), and 112.12(c)(6)). If, at a regulated facility, indoor conditions are such that they reduce external corrosion and potential for discharges, these operating conditions may be considered in the development of a site-specific inspection program. Tank inspection standards, such as the American Petroleum Institute's (API) Standard 653 and the Steel Tank Institute's (STI) SP001, detail the appropriate inspection scope and frequency depending on container type and configuration. However, in developing a regulated facility's inspection program, it should be recognized that although indoor oil storage containers are generally shielded from precipitation, precipitation is only one of the many factors that promote corrosion. Even indoors, high humidity acidic dust settling on the container surface or some other factor may promote external corrosion. Furthermore, indoor containers may be comparatively more susceptible to accidental impacts from mobile equipment (e.g., forklifts) given the more restricted space. Indoor containers also remain subject to internal corrosion that can lead to pitting and leaking.

The SBA requested that EPA consider whether there should be differentiated integrity testing requirements for containers located indoors. With respect to integrity testing of aboveground storage tanks located indoors, applicable industry inspection standards, such as API 653 and STI SP001 do not specifically differentiate inspection requirements for indoor versus outdoor containers. However, SP001, for example, does differentiate based on container size and configuration, and, for tanks with storage capacities up to 5,000 gallons provided with sized secondary containment and a release prevention barrier (such as a liner, concrete pad, or an elevated tank in secondary containment), the standard requires visual inspection and recordkeeping by the owner/operator per the SP001 schedule. For tanks greater than 5,000 gallons in the same configuration, SP001 requires visual inspection by the owner/operator coupled with a formal external inspection by a certified inspector on a 20-year cycle versus a more stringent inspection scope and schedule for tanks located outdoors in earthen secondary containment. Therefore, the Agency believes that the industry standards already provide flexibility to the owner/operator of the facility based on tank size and configuration. Additionally, the owner/operator in conjunction with the certifying PE has the flexibility under the SPCC regulation to develop an alternate container inspection program.

Given the clarifications provided here, EPA does not believe that further regulatory action is needed to address this issue. Nevertheless, EPA welcomes comments on whether further clarification regarding requirements for integrity testing of containers located indoors, or a regulatory amendment is necessary.

N. Underground Emergency Diesel Generator Tanks at Nuclear Power Stations

Under the U.S. Nuclear Regulatory Commission (NRC) regulations, a nuclear power generation facility must meet certain design criteria to ensure that the plant will be operated in a manner protective of the public's health and safety (10 CFR part 50, Appendix A). The NRC design criteria cover the design, fabrication, installation, testing and operation of structures, systems, and components important to safety. Nuclear power stations are required to provide redundant on-site electric power system and an off-site power system to allow functioning of structures, systems, and components important to safety. These on-site power systems typically consist of diesel-powered emergency or standby generators, which may include day fuel tanks, either integral to the generator or immediately adjacent to the unit. Additional reserve capacity may also be provided by aboveground and/or underground storage tanks (USTs) to meet the NRC requirement to provide a seven-day supply of fuel oil on-site. Each utility develops its particular systems and procedures for ensuring their operability and integrity; these elements become part of the safety program that is reviewed and approved by NRC in granting an operating license for the utility.

EPA currently exempts from the SPCC requirements any completely buried storage tank that is subject to all of the technical requirements for USTs under 40 CFR part 280 or a state program approved under part 281. However, as discussed in the preamble to the final rule for parts 280 and 281 (53 FR 37082, September 23, 1988), the Agency chose to defer the requirements of Subparts B, C, D, E, and G for these tanks pending completion of a review of the NRC regulations (10 CFR part 50, Appendix A) governing these tanks to determine whether further regulation under the UST regulations is necessary to protect human health and the environment or whether such regulation would be inconsistent with the NRC regulations. Thus, UST tanks that are part of an emergency generator system at a nuclear power generation facility regulated by the NRC are still subject to some of the UST regulations. For example, deferred tanks must still comply with the release response and corrective action requirements under Subpart F (§§ 280.60 through 280.67). Consequently, because these tanks are not subject to all of the UST requirements, they are currently subject to the SPCC requirements.

Nuclear power plant stakeholders have provided comments to the Agency questioning whether dual regulation of these USTs under relevant NRC requirements and SPCC requirements is appropriate or necessary. The industry has also indicated that to comply with SPCC requirements, the unit would need to be shut down to properly address secondary containment and integrity testing and inspection requirements; to do so otherwise would violate stringent NRC operating safety requirements. A shutdown to address SPCC requirements is costly and jeopardizes public power supply needs. To further analyze the potential overlap and concerns relative to the SPCC requirements in light of NRC requirements, EPA conducted a site visit to a nearby nuclear power station and consulted NRC.

EPA compared the NRC regulations and guidelines with the relevant SPCC requirements. Under 10 CFR Part 50, Appendices A and B, nuclear power generation facility operators must identify the relevant codes and standards, develop and implement a quality assurance program, and maintain appropriate records of the design, fabrication, erection, and testing throughout the life of the nuclear unit. The quality assurance program required per Appendix B must be documented by written policies, procedures or instructions and implemented as documented. To assist nuclear power unit licensees in complying with the license requirements, the NRC has developed a number of guidance documents, including documents pertaining to the operation of standby diesel generators. Specifically, NRC Regulatory Guide 1.137, ''Fuel-Oil Systems for Standby Diesel Generators'' details the requirements for inspection and testing of fuel oil systems, corrosion protection, and the periodic cleaning of fuel supply tanks. These measures are similar to the measures required under the SPCC regulation for completely buried tanks, which include corrosion protection of buried tanks (§ 112.8(c)(4)) and of buried piping (§ 112.8(d)(1)), and inspection and testing of buried piping (§ 112.8(d)(4)). According to NRC, this guideline represents one acceptable method to meet the NRC requirements for these standby systems. If a licensee chooses an alternative approach then equivalency must be demonstrated through an engineering review by the NRC as part of the licensing process.

In conducting the site visit to a nearby nuclear power station, EPA observed that the standby generators had both aboveground and underground storage tanks on-site to meet the requisite fuel demands. The USTs were installed in 1973 and consist of single-walled steel tanks equipped with automatic tank gauging and are subjected to nondestructive evaluation (ultrasonic thickness testing) every 10 years. Associated piping is tested every 10 years. EPA then reviewed the relevant SPCC requirements associated with USTs that meet the definition of completely buried tanks in § 112.2 of the SPCC rule and conducted a comparative analysis as detailed below.

- All containers: § 112.8(c)(2): Sized secondary containment requirements.
- Buried Tanks: § 112.8(c)(4): Protection and leak testing of buried metallic tanks.
- All Containers: § 112.8(c)(8): Engineering of each container to prevent overfills.
- Buried Piping: § 112.8(d): Protection and leak testing of buried piping.

Since the USTs are single-walled steel tanks, the tanks may not meet the secondary containment requirements at § 112.8(c)(2); however, an argument could be made that secondary containment is impracticable under § 112.7(d). Since these USTs remain subject to Subpart F of Part 280 (Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances), the requirements of § 112.7(d)(1) and 112.7(d)(2) may be met. Additionally, since the tanks were installed prior to January 10, 1974, the completely buried tanks are not subject to the cathodic protection requirements at § 112.8(c)(4). However, since the tanks are subjected to a non-destructive evaluation on a 10-year cycle, the leak testing requirement under § 112.8(c)(4) would be met. Completely buried tanks are also subject to the engineering requirement at § 112.8(c)(8) to prevent overfills. The observed tanks were equipped with automatic tank gauging. Buried piping associated with the completely buried tanks is subjected to pressure testing on a 10-year cycle; however, since the piping was installed prior to 2002, the buried piping is not subject to the coating, wrapping and cathodic protection requirements at § 112.8(d)(1).

The case summarized above illustrates the similarities between UST safety measures implemented under the NRC regulations and SPCC requirements applicable to completely buried tanks. EPA believes that nuclear power plants have unique characteristics that differentiate them from other types of regulated facilities. Thus, EPA understands that certain actions necessary to comply with the SPCC rule could be impracticable at NRC facilities because they may compromise the availability of the emergency diesel generation tank and consequently affect the reliability of the nuclear power supply and result in the shut down of a nuclear power plant. EPA believes that the NRC operating safety requirements best address the specific and unique operational challenges represented by completely buried tanks at nuclear power plants. EPA is, therefore, proposing to exempt completely buried oil storage tanks at NRC-regulated facilities that are subject to the safety requirements under the NRC regulations. The exemptions would apply only to completely buried tanks as defined in § 112.2 of the SPCC regulation. Similar to completely buried tanks subject to all the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281, completely buried tanks at NRC-regulated facilities would not be counted as part of the aggregate aboveground storage capacity of the facility, but the tanks would need to be marked on the facility diagram as provided in § 112.7(a)(3) if the facility is otherwise subject to the SPCC rule.

EPA seeks comments on the proposed exemption of completely buried oil storage tanks at NRC facilities. Any alternative approach presented must include an appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

O. Wind Turbines

The Agency was requested to address the applicability of the rule to wind turbines used to produce electricity. In consultation with DOE, EPA's research shows that the larger 1.5-mega watt (MW) turbines have gearbox capacities typically ranging between 55 and 65 gallons. Additionally, other wind turbine components, such as the gear reducers within the turbine for yaw and pitch control may contain up to 10 gallons of lubricating oil. Based on these capacities, wind turbine farms at locations where there is a reasonable expectation of a discharge to navigable waters or adjoining shorelines could meet the 1,320-gallon aggregate aboveground oil storage capacity applicability threshold for the SPCC rule and would be required to prepare a Plan. The Agency believes that these wind turbines meet the definition of oil-filled operational equipment promulgated in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) and thus can take advantage of the alternative compliance option provided for this type of equipment.

The amendments to the SPCC rule promulgated in December 2006 allow owners and operators of facilities with eligible oil-filled operational equipment the option to prepare an oil spill contingency plan and a written commitment of manpower, equipment, and materials to expeditiously control and remove any oil discharged that may be harmful without having to make an individual impracticability determination as required in § 112.7(d). If an owner or operator takes this option, he or she is also required to establish and document an inspection or monitoring program for this qualified oil-filled operational equipment to detect equipment failure and/or a discharge in lieu of providing secondary containment.

The Agency defined ''oil-filled operational equipment'' as ''equipment

that includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device. Oil-filled operational equipment is not considered a bulk storage container, and does not include oil-filled manufacturing equipment (flow-through process). Examples of oil-filled operational equipment include, but are not limited to, hydraulic systems, lubricating systems (e.g., those for pumps, compressors and other rotating equipment, including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil solely to enable the operation of the device.'' (71 FR 77290)

These examples the Agency included in definition of oil-filled operational equipment were intended to provide additional clarity and not to exclude other such equipment. Based on their characteristics, the Agency considers wind turbines to meet the definition of oil-filled operational equipment. Wind farm facilities can take advantage of the oil spill contingency plan compliance option as an alternative to secondary containment requirements.

In addition, in examining the design of a wind turbine, a PE (or owner/operator of a qualified facility) may determine that it inherently provides sufficient secondary containment for its oil reservoirs. The nacelle, or structure that contains the key components of the turbine, including the gearbox and the electrical generator, may be determined to serve as sufficient secondary containment in the event of an oil discharge. Thus, the PE or owner/operator of a qualified facility may certify a wind turbine as being in compliance with the § 112.7(c) requirements for secondary containment. As such, the alternative measures described in § 112.7(k) (i.e., an oil spill contingency plan, the commitment of resources and manpower, and an inspection or monitoring program) would not be necessary.

It is important to note that a wind farm that meets the criteria for qualified facility status has additional compliance alternatives, and flexibility is available, the most significant being the option for self-certification of his SPCC Plan. EPA seeks comments on whether this discussion provides adequate clarity on the applicability of the SPCC rule to wind turbines, or whether further clarification is needed.

P. Technical Corrections

EPA proposes a technical correction to the introductory paragraph of § 112.3, to move the phrase ''in writing'' after ''must prepare'' and then insert the phrase ''and implement'' after the phrase ''in writing'', in order to provide an explicit requirement for a facility owner to both prepare and implement an SPCC Plan. This paragraph describes the requirement for an owner or operator of an onshore or offshore facility subject to the rule to prepare an SPCC Plan, in writing, and in accordance with § 112.7 and any other applicable section of the rule. Adding the term ''and implement'' to this paragraph would be consistent with the subsequent subsections, which provide compliance dates to both prepare or amend, *and implement*, an SPCC Plan for various categories of facility owners and operators. In describing the requirement to prepare a Plan in the introductory paragraph of § 112.3, the Agency inadvertently excluded the explicit requirement to also implement that Plan. Clearly, a facility owner or operator must implement his SPCC Plan in order for it to be effective in preventing discharges of oil to navigable waters and adjoining shorelines. In order to provide clarity, EPA will explicitly include the word ''implement'' in § 112.3 as a technical correction, and seeks comment on this clarification.

EPA also proposes a technical correction to the introductory paragraph of § 112.12, to delete the phrase ''(excluding a production facility.)'' In the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), EPA amended Subpart C of part 112 by removing several sections because they were not appropriate for animal fats and vegetable oils. At that time, as a point of clarification, EPA also removed the phrase ''for onshore facilities (excluding production facilities)'' from the title of § 112.12, because, having removed the inapplicable production facility requirements from Subpart C, it was no longer necessary to differentiate onshore oil production facilities from other facilities in § 112.12. However, EPA inadvertently neglected to remove the corresponding phrase from the introductory paragraph of the section. EPA currently seeks to correct this inadvertent omission. EPA seeks comments on this proposed technical correction.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the regulatory impact analysis (RIA) entitled, ''Regulatory Impact Analysis for the Proposed Amendments to the Oil Pollution Prevention Regulations (40 CFR Part 112)'' (September 2007). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. EPA requests comments from the public on the costs and benefits of any of the proposed regulatory alternatives and preferred options discussed in this proposed rulemaking action.

For the economic impact analysis of these proposed amendments to the SPCC rule, EPA used the SPCC rule requirements at 40 CFR part 112, as amended in 2002 (67 FR 47042, July 17, 2002) as the baseline to estimate the potential cost savings to regulated facilities from these proposed amendments. The cost savings are not adjusted for the estimated, potential cost savings for the final 2006 rule amendments and may overestimate the cost savings for these proposed amendments, particularly for proposed Tier 1 qualified facilities, proposed revisions to the integrity testing requirement, and the proposed amendments to delay SPCC Plan preparation and implementation for oil production facilities. The regulatory impact analysis developed in support of this proposal compares the compliance costs for owners and operators of facilities affected by the proposed amendments to the costs owners and operators would face under the 2002 SPCC rule amendments. The proposed regulatory amendments have twelve major components: (1) Exempt hot-mix asphalt; (2) exempt pesticide application equipment and related mix containers used at farms; (3) exempt heating oil containers at single-family residences; (4) amend the definition of ''facility'' to clarify the flexibility

associated with defining a facility's boundaries; (5) amend the facility diagram requirement to provide additional flexibility for all facilities; (6) define ''loading/unloading rack'' to clarify the equipment subject to the provisions for facility tank car and tank truck loading/unloading racks; (7) provide streamlined requirements for a subset of qualified facilities; (8) amend the general secondary containment provision to provide more clarity; (9) amend the security requirements for all facilities; (10) amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities; (11) amend the integrity testing requirements for containers that store animal fats or vegetable oils and meet certain criteria; (12) streamline a number of requirements at oil production facilities; and (13) exempt completely buried oil storage tanks at nuclear power generation facilities. EPA is also providing clarification in the preamble to this proposed rule on three additional issues identified by the regulated community: (1) the consideration of man-made structures in determining how to comply with the SPCC rule requirements; (2) the applicability of the rule to underground emergency diesel generator tanks at nuclear power stations, and (3) the applicability of the rule to wind turbines for electricity generation.

For each of these components, EPA estimated potential cost savings to regulated facilities that may result from reductions in compliance costs. The main steps used to estimate the compliance cost impacts of the SPCC proposed rule are as follows:

- Develop the baseline universe of SPCC-regulated facilities;
- Estimate the number of facilities affected by the proposed rule amendments;
- Estimate changes in unit compliance cost for each regulated facility affected by the proposed rule;
- Estimate total compliance cost savings to owners and operators of potentially affected facilities; and
- Annualize compliance cost savings over a ten-year period, 2008 through 2017, and discount the estimates using 3 and 7 percent discount rates.

Based on these steps, EPA estimated the annualized compliance cost savings to potentially affected facilities associated with each of the major components of the proposed rule, and presents the results of the economic analysis in Exhibit 1. EPA uses four key assumptions in its regulatory impact analysis. First, the Agency assumes that cost minimization behavior applies to all owners and operators of facilities that qualify for reduced regulatory requirements, whereby all those affected would seek burden relief. Second, EPA assumed, consistent with EPA's guidelines for conducting economic analyses, that all existing owners and operators of facilities are in full compliance with the July 2002 amendments to the SPCC rule (67 FR 47042). Third, EPA assumes that owners and operators of existing SPCC-regulated facilities would forgo compliance activities offered as alternatives to activities that required one-time initial investments because they would have already incurred a one-time cost. For example, EPA assumes that an owner or operator of an existing facility who would qualify for reduced security requirements under the proposed rule that allows facility owners/operators to tailor their security measures to the facility's specific characteristics and location, would have already provided the security measures as per the 2002 rule amendments or demonstrated environmental equivalence for tailored security measures. Thus, owners and operators of existing facilities would not take advantage of the provided alternative. Fourth, EPA assumes that compliance is nationally consistent although variability in state regulations and the distribution of affected facilities is recognized.

Exhibit 1 presents the estimated cost savings for each rule component and for the proposed rule amendments in total. For several proposed rule amendments, such as the security requirements and facilities handling AFVO, EPA did not have numeric data on the number of affected facilities within a general industry sector; thus, it developed three scenarios to evaluate a range of cost savings.[17] The exhibit below presents the estimated cost savings for the proposed options for this proposed rule. The total potential cost savings are calculated taking into account the mid-point values of the estimated ranges of statistical distributions for unit costs. These estimates are not necessarily additive, given that they do not account for interactions among the various components of the proposed rule.[18]

The oil production sector and farms would benefit from multiple components of the proposed rule. Farms would benefit from the proposed requirements for Tier I qualified facilities, amendments to the definition of ''facility'', amendments to the security, integrity testing, facility diagram requirements, amendments to the definition of ''loading/unloading rack'', and the exemption for single-family residential heating oil containers, in addition to the exemption of pesticide application equipment. The total cost savings to farm owners and operators from these amendments are estimated at $263 million on an annualized basis.

The oil production sector would benefit from proposed revisions to the facility diagram requirements, and amendments to the definition of ''loading/unloading rack'', and some would benefit from the new requirements for Tier I qualified facilities, in addition to amendments specific to the oil production sector such as the six-month delay in preparation and implementation of SPCC Plans and the exemption of flow-through separation and treating equipment from sized secondary containment requirements. The total savings to owners and operators of oil production facilities from all of the proposed amendments that affect this sector are estimated at $83 million on an annualized basis.

[17] For example, to develop a range for the number of affected AFVO facilities, EPA contacted industry experts who determined that 40 percent to 90 percent of containers at AFVO facilities are made of stainless steel and almost all containers have bottom drainage. Therefore, based on professional judgment, the Agency considered three scenarios: 40% (low), 65% (medium) and 90% (high) of all AFVO facilities would have food oil tanks that are eligible.

[18] Certain industry sectors are affected by multiple rule components. For example, farms would benefit from the new requirements for Tier I qualified facilities, amendments to the definition of ''facility'', amendments to the security, integrity testing, facility diagram requirements, amendments to the definition of ''loading/unloading rack'', and the exemption for single-family residential heating oil containers, in addition to the exemption of pesticide application equipment. As a result, taking advantage of one new requirement might preclude a facility from benefiting from other proposed requirements.

EXHIBIT 1.—ESTIMATED COMPLIANCE COST SAVINGS FOR THE PROPOSED REGULATORY AMENDMENTS

Rule component/scenario	Annualized cost savings ($2006, in millions, 7% discount rate)
Hot-Mix Asphalt:	
Exempt HMA containers	$7
Farms:	
Exempt pesticide application equipment; clarification on nurse tanks being mobile refuelers	$4
Residential Heating Oil Containers:	
Exempt single-family residential heating oil containers	$2
Definition of Facility:	
Revise the definition of ''facility''	$251
Facility Diagram:	
Revise facility diagram requirement	$1
Loading/Unloading Racks:	
Define ''loading/unloading rack''	$48
Tier I Qualified Facilities:	
Provide streamlined requirements for Tier I qualified facilities	$24
General Secondary Containment:	
Amend the general secondary containment provision to provide more clarity	No cost impact.
Security Requirements:	
Revise security requirements [1]	$7
Integrity Testing:	
Amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities.	$9
Animal Fats and Vegetable Oil:	
Amend integrity testing requirements for containers that store animal fats or vegetable oil and that meet certain criteria [2].	$2
Oil Production Facilities:	
Six month delay for Plan preparation and implementation	$25
Exempt flowlines and gathering lines from secondary containment	No net cost impact.
Flow-through separation and treatment equipment	$8
Man-Made Structures:	
Consider manmade structures in determining SPCC rule applicability	No cost impact.
Nuclear Power Stations:	
Exempt completely buried oil storage tanks at nuclear power generation facilities.	Less than $1.
Wind turbines:	
Clarify applicability of the rule to wind turbines used to produce electricity	No cost impact.
Total	$387

[1] Mid-point estimate (17% of oil production facilities, 50% of AFVO facilities, and 8% of farms affected). Cost savings might be higher or lower using different assumptions.
[2] Mid-point estimate (65% of facilities affected). Cost savings might be lower using different assumptions.

B. Paperwork Reduction Act

The information collection requirements for this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 0328.14.

EPA does not collect the information required by the SPCC rule on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility owner or operator helps prevent oil discharges and mitigate the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility personnel. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although facility personnel are the primary data user, EPA also uses the data in certain situations. EPA reviews SPCC Plans: (1) When it requests a facility owner or operator to submit required information in the event of certain discharges of oil or to evaluate an extension request; and (2) as part of the EPA's inspection program. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Clean Water Act as implemented by 40 CFR part 112.

EPA estimates that in the absence of this proposed rulemaking, approximately 592,000 existing facilities would be subject to the SPCC rule in 2008 and have SPCC Plans. In addition, EPA estimates that approximately 18,100 new facilities would become subject to the SPCC requirements during that year, resulting in a total of about 610,000 regulated facilities in 2008.[19]

Under this proposed action, the storage capacity of containers solely containing hot-mix asphalt would be exempt from the SPCC rule; the proposal would also exempt all heating oil containers for single-family residences; pesticide application equipment and related mix containers used at farms would no longer be regulated; the definition of ''facility'' would be amended to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition governs the applicability of 40 CFR part 112; EPA would amend the facility

[19] To estimate the number of SPCC-regulated facilities in 2008, EPA used the estimated number of facilities for 2005 (571,000) and applied annual, industry-specific growth rates that resulted in about 610,000 facilities.

diagram requirement to provide additional flexibility for all facilities; EPA would provide a definition for the term ''loading/unloading rack,'' which would determine whether a facility is subject to the provisions at § 112.7(h), as well as specifically exclude onshore oil production facilities and farms from the requirements of § 112.7(h); a subset of qualified facilities (Tier I) would be allowed to complete and implement an SPCC Plan template (proposed as Appendix G to 40 CFR part 112) in order to comply with the SPCC rule requirements; the security requirements at § 112.7(g) would be modified to allow an owner or operator to tailor his security measures to the facility's specific characteristics and location; the current integrity testing requirements at §§ 112.8(c)(6) and 112.12(c)(6) would be replaced with the requirements provided for qualified facilities, as promulgated in December 2006; the PE or an owner/operator certifying an SPCC Plan would have the flexibility to determine the scope of integrity testing that is appropriate for containers that store animal fats or vegetable oil that is intended for human consumption and that meet other criteria; lastly, this proposed rulemaking would streamline the requirements for oil production facilities by modifying the definition of production facility to be consistent with the proposed amendments to the definition of facility, extending the timeframe by which a new oil production facility must prepare and implement an SPCC Plan, exempting flow-through process vessels at oil production facilities from the sized secondary containment requirements, while maintaining general secondary containment requirements and requiring additional oil spill prevention measures, establishing more specific requirements for contingency planning and a flowline/intra-facility gathering line maintenance program, while exempting such flowlines and intra-facility gathering lines at oil production facilities from the secondary containment requirements, clarifying the applicability of the SPCC rule to oil containers at a natural gas facility, clarifying the SPCC provisions to which a natural gas facility may be subject, and clarifying the definition of ''permanently closed'' as it applies to an oil production facility.

Under this proposed action, an estimated 610,000 regulated facilities would be subject to the SPCC information collection requirements of this rule in 2008.[20] The Agency estimates that as a result of the proposed amendments to tailor, clarify, and streamline certain SPCC requirements, the reporting and recordkeeping burden would decrease by approximately 1.4 million hours. The proposed amendments would reduce capital and O&M costs by approximately $43 million on an annualized basis.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business as defined in the U.S. Small Business Administration (SBA)'s regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and oil production facilities, which constitute a large percentage of the facilities affected by this proposed rule, generally defines small businesses as having less than $0.5 million to $27.5 million per year in sales receipts, depending on the industry, or 500 or fewer employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule would not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Under this proposal, the following issues will be addressed: exempt hot-mix asphalt from SPCC requirements; exempt specific oil storage equipment on farms from the SPCC rule requirements; exempt heating oil containers at single-family residences; clarify how containers, fixed and mobile, are identified on the facility diagram; modify the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities and that the definition of ''facility'' governs the applicability to the SPCC rule; define ''loading/unloading rack'' to clarify whether a facility is subject to the SPCC rule requirements of § 112.7(h); streamline the requirements for a subset of qualified facilities (Tier I qualified facilities); amend the facility security requirements at § 112.7(g) to allow an owner or operator to tailor security measures to his facility's specific characteristics and location; replace the current integrity testing requirements at §§ 112.8(c)(6) and 112.12(c)(6) with the current regulatory requirement for a qualified facility; provide the PE or an owner/operator certifying an SPCC Plan with the flexibility for integrity testing

[20] To estimate the number of SPCC-regulated facilities in 2008, EPA used the estimated number of facilities for 2005 (571,000) and applied annual industry-specific growth rates.

for bulk storage containers that store animal fats or vegetable oil and that meet other criteria; and initiate several amendments to streamline the requirements for oil production facility to address concerns raised by the production sector, respectively.

Overall, EPA estimates that this proposed action would reduce annual compliance costs by approximately $387 million for owners and operators of affected facilities. Total costs were annualized over a 10-year period using a 7 percent discount rate. EPA derived these savings by estimating the number of facilities affected by each proposed amendment; identifying the specific behavioral changes that may occur (e.g., choosing to prepare an SPCC Plan template instead of a full SPCC Plan); estimating the unit costs of compliance measures under the baseline and proposed scenarios; and applying the change in unit costs to the projected number of affected facilities.

EPA has therefore concluded that this proposed rule would relieve regulatory burden for small entities and therefore, certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed action would reduce compliance costs on owners and operators of affected facilities by approximately $387 million annually, although EPA acknowledges this total estimate is derived from analyses of individual major components of the proposed rule that are not necessarily additive, given that they do not account for interactions among the various components. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the proposed rule would be to reduce burden for facility owners and operators, including certain small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters and adjoining shorelines. EPA recognizes that some States have more stringent requirements (56 FR 54612, October 22, 1991). This proposed rule would not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule would not significantly or uniquely affect communities of Indian trial governments. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045 Protection of Children From Environmental Health & Safety Risks

Executive Order 13045,''Protection of Children from Environmental health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall effect of the proposed rule is to decrease the regulatory burden on facility owners or operators subject to its provisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The owner or operator of a facility subject to the SPCC rule has the flexibility to consider applicable industry standards in the development of an SPCC Plan, in accordance with good engineering practice. However, this proposed rulemaking does not involve technical standards, as it does not set or incorporate by reference any one specific technical standard. Therefore, the NTTAA does not apply. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 112

Environmental protection, Animal fats and vegetable oils, Hot-mix Asphalt, Farms, Flammable and combustible materials, Integrity testing, Loading racks, Materials handling and storage, Natural gas, Oil pollution, Oil and gas exploration and production, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Secondary containment, Security, Tanks, Unloading racks, Water pollution control, Water resources.

Dated: October 1, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 112 of the Code of Federal Regulations is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—[Amended]

2. Amend § 112.1 as follows:

a. By revising paragraphs (d)(2)(i) and (d)(2)(ii).

b. By revising paragraph (d)(4).

c. By adding paragraphs (d)(8) through (d)(10).

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

(i) The completely buried storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility excludes the capacity of a completely buried tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, that is currently subject to all of the technical requirements of part 280 of this chapter or all of the technical requirements of a State program approved under part 281 of this chapter, or which, in the case of a nuclear power generation facility, meets the Nuclear Regulatory Commission design criteria at 10 CFR part 50, Appendices A and B. The completely buried storage capacity of a facility also excludes the capacity of a container that is ''permanently closed,'' as defined in § 112.2.

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For the purposes of this exemption, only containers with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes: the capacity of a container that is ''permanently closed'' and the capacity of a ''motive power container'' as defined in § 112.2; the capacity of hot-mix asphalt or any hot-mix asphalt container; the capacity of a container for heating oil used solely at a single-family residence; and the capacity of pesticide application equipment and related mix containers used at farms.

* * * * *

(4) Any completely buried storage tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter or which, in the case of a nuclear power generation facility, meets the Nuclear Regulatory Commission design criteria at 10 CFR part 50, Appendices A and B, except that such a tank must be marked on the facility diagram as provided in § 112.7(a)(3), if the facility is otherwise subject to this part.

* * * * *

(8) Hot-mix asphalt, or any hot-mix asphalt container.

(9) Any container for heating oil used solely at a single-family residence.

(10) Any pesticide application equipment or related mix containers used at farms.

* * * * *

3. Amend § 112.2 by revising the definitions for ''Facility'', ''Production facility'', and adding a definition for ''Loading/unloading rack'' in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Facility means any mobile or fixed, onshore or offshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and oil waste treatment, or in which oil is used, as described in Appendix A to this part. The boundaries of a facility depend on several site-specific factors, including but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site. Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities. Only this definition governs whether a facility is subject to this part.

* * * * *

Loading/unloading rack means a structure necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to

the requirements of this part. A loading/unloading rack includes a platform, gangway, or loading/unloading arm; and any combination of the following: piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.

* * * * *

Production facility means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and may be located in a single geographical oil or gas field operated by a single operator. This definition governs whether a facility is subject to a specific section of this part.

* * * * *

4. Amend § 112.3 as follows:

a. By revising the introductory text.

b. By revising paragraph (b)(1).

c. By adding paragraph (b)(3).

d. Revising paragraph (g).

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

The owner of operator of an onshore or offshore facility subject to this section must prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereafter ''SPCC Plan'' or ''Plan),'' in accordance with § 112.7 and any other applicable section of this part.

* * * * *

(b)(1) If you are the owner or operator of an onshore or offshore facility (excluding oil production facilities) that becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

(3) If you are the owner or operator of an oil production facility that becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan within six months after you begin operations.

* * * * *

(g) *Qualified Facilities.* The owner or operator of a qualified facility as defined in this subparagraph may self certify his or her facility's Plan, as provided in § 112.6. A qualified facility is one that meets the following Tier I or Tier II qualified facility criteria:

(1) A Tier I qualified facility meets all of the qualification criteria in paragraph (g)(2) of this section and has no individual oil storage container with a capacity greater than 5,000 U.S. gallons.

(2) A Tier II qualified facility is one that:

(i) Has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less; and

(ii) Has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism).

5. Revise § 112.6 to read as follows:

§ 112.6 Qualified Facilities Plan Requirements.

Qualified facilities meeting the Tier I applicability criteria in § 112.3(g)(1) are subject to either all of the requirements in paragraph (a) of this section or all of the requirements in paragraph (b) of this section. Facilities meeting the Tier II applicability criteria in § 112.3(g)(2) are subject to the requirements in paragraph (b) of this section.

(a) *Tier I Qualified Facilities*—(1) *Preparation and Self-Certification of the Plan.* If you are an owner or operator of a facility that meets the Tier I qualified facility criteria in § 112.3(g)(1), you may choose to prepare an SPCC Plan that meets the requirements of paragraph (a)(3) of this section to serve as the Plan for your facility, instead of preparing a Plan meeting requirements of paragraph (b) of this section or the general Plan requirements in § 112.7 and applicable requirements in subparts B and C of this part, including having the Plan certified by a Professional Engineer as required under § 112.3(d). The template in Appendix G to this part has been developed to meet the requirements of 40 CFR part 112 and must be used as the SPCC Plan. To complete the template in Appendix G, you must certify that:

(i) You are familiar with the applicable requirements of 40 CFR part 112;

(ii) You have visited and examined the facility;

(iii) You prepared the Plan in accordance with accepted and sound industry practices and standards;

(iv) Procedures for required inspections and testing have been established in accordance with industry inspection and testing standards or recommended practices;

(v) You will fully implement the Plan;

(vi) The facility meets the qualification criteria in § 112.3(g)(1);

(vii) The Plan does not deviate from any requirement of this part as allowed by 112.7(a)(2) and 112.7(d); and

(viii) The Plan and individual(s) responsible for implementing this Plan have the approval of management, and the facility owner or operator has committed the necessary resources to fully implement this Plan.

(2) *Technical Amendments.* You must certify any technical amendments to your Plan in accordance with paragraph (a)(1) of this section when there is a change in the facility design, construction, operation, or maintenance that affects its potential for a discharge as described in § 112.1(b). If the facility change results in the facility no longer meeting the Tier I qualifying criteria in § 112.3(g)(1) because an individual oil storage container capacity exceeds 5,000 U.S. gallons or the facility capacity exceeds 10,000 gallons in aggregate aboveground storage capacity, within six months following preparation of the amendment, you must either:

(i) Prepare and implement a Plan in accordance with § 112.6(b) if you meet the Tier II qualified facility criteria in § 112.3(g)(2), or

(ii) Prepare and implement a Plan in accordance with the general Plan requirements in § 112.7, and applicable requirements in subparts B and C of this part, including having the Plan certified by a Professional Engineer as required under § 112.3(d).

(3) *Plan Template and Applicable Requirements.* The following requirements under § 112.7 and in subparts B and C of this part apply to qualified Tier I facilities choosing the self-certification Tier I option: §§ 112.7(a)(3)(i), 112.7(a)(3)(iv), 112.7(a)(3)(vi), 112.7(a)(4), 112.7(a)(5), 112.7(c), 112.7(e), 112.7(f), 112.7(g), 112.7(k), 112.8(b)(1), 112.8(b)(2), 112.8(c)(1), 112.8(c)(3), 112.8(c)(4), 112.8(c)(5), 112.8(c)(6), 112.8(c)(10), 112.8(d)(4), 112.9(b), 112.9(c), 112.9(d)(1), 112.9(d)(3), 112.9(d)(4), 112.10(b), 112.10(c), 112.10(d), 112.12(b)(1), 112.12(b)(2), 112.12(c)(1), 112.12(c)(3), 112.12 (c)(4), 112.12(c)(5), 112.12(c)(6), 112.12(c)(10), and 112.12(d)(4). Additionally, you must meet the following requirements:

(i) *Failure analysis, in lieu of the requirements in § 112.7(b).* Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any

other equipment known to be a source of discharge), include in your Plan a prediction of the direction and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

(ii) *Bulk storage container secondary containment, in lieu of the requirements in §§ 112.8(c)(2) and (c)(11) and 112.12(c)(2) and (c)(11).* Construct all bulk storage container installations, including mobile or portable oil storage containers, so that you provide a secondary means of containment for the entire capacity of the largest single container plus additional capacity to contain precipitation. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a catchment basin or holding pond. Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b).

(iii) *Overfill prevention, in lieu of the requirements in §§ 112.8(c)(8) and 112.12(c)(8).* Ensure that each container is provided with a system or documented procedure to prevent overfills of the container, describe the system or procedure in the SPCC Plan and regularly test to ensure proper operation or efficacy.

(b) *Tier II Qualified Facilities*—(1) *Preparation and Self-Certification of Plan.* If you are the owner or operator of a facility that meets the Tier II qualified facility criteria in § 112.3(g)(2), you may choose to self-certify your Plan. You must certify in the Plan that:

(i) You are familiar with the requirements of this part;

(ii) You have visited and examined the facility;

(iii) The Plan has been prepared in accordance with accepted and sound industry practices and standards, and with the requirements of this part;

(iv) Procedures for required inspections and testing have been established;

(v) You will fully implement the Plan;

(vi) The facility meets the qualification criteria set forth under § 112.3(g)(2);

(vii) The Plan does not deviate from any requirement of this part as allowed by § 112.7(a)(2) and 112.7(d), except as provided in paragraph (b)(3) of this section; and

(viii) The Plan and individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

(2) *Technical Amendments.* If you self-certify your Plan pursuant to (b)(1) of this section, you must certify any technical amendments to your Plan in accordance with paragraph (b)(1) of this section when there is a change in the facility design, construction, operation, or maintenance that affects its potential for a discharge as described in § 112.1(b), except:

(i) If a Professional Engineer certified a portion of your Plan in accordance with paragraph (b)(4) of this section, and the technical amendment affects this portion of the Plan, you must have the amended provisions of your Plan certified by a Professional Engineer in accordance with paragraph (b)(4)(ii) of this section.

(ii) If the change is such that the facility no longer meets the Tier II qualifying criteria in § 112.3(g)(2) because it exceeds 10,000 gallons in aggregate aboveground storage capacity you must, within six months following the change, prepare and implement a Plan in accordance with the general Plan requirements in § 112.7 and the applicable requirements in subparts B and C of this part, including having the Plan certified by a Professional Engineer as required under § 112.3(d).

(3) *Applicable Requirements.* Except as provided in this subparagraph, your self-certified SPCC Plan must comply with § 112.7 and the applicable requirements in subparts B and C of this part:

(i) *Environmental Equivalence.* Your Plan may not include alternate methods which provide environmental equivalence pursuant to § 112.7(a)(2), unless each alternate method has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (b)(4) of this section.

(ii) *Impracticability.* Your Plan may not include any determinations that secondary containment is impracticable and provisions in lieu of secondary containment pursuant to § 112.7(d), unless each such determination and alternate measure has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (b)(4) of this section.

(4) *Professional Engineer Certification of Portions of a Qualified Facility's Self-certified Plan.* As described in paragraph (b)(3) of this section, the facility owner or operator may not self-certify alternative measures allowed under § 112.7(a)(2) or (d), that are included in the facility's Plan. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer as follows:

(i) For each alternative measure allowed under § 112.7(a)(2), the Plan must be accompanied by a written statement by a Professional Engineer that states the reason for nonconformance and describes the alternative method and how it provides equivalent environmental protection in accordance with § 112.7(a)(2). For each determination of impracticability of secondary containment pursuant to § 112.7(d), the Plan must clearly explain why secondary containment measures are not practicable at this facility and provide the alternative measures required in § 112.7(d) in lieu of secondary containment.

(ii) By certifying each measure allowed under § 112.7(a)(2) and (d), the Professional Engineer attests:

(A) That he is familiar with the requirements of this part;

(B) That he or his agent has visited and examined the facility; and

(C) That the alternative method of environmental equivalence in accordance with § 112.7(a)(2) or the determination of impracticability and alternative measures in accordance with § 112.7(d) is consistent with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part.

(iii) The review and certification by the Professional Engineer under this paragraph is limited to the alternative method which achieves equivalent environmental protection pursuant to § 112.7(a)(2) or to the impracticability determination and measures in lieu of secondary containment pursuant to § 112.7(d).

6. Amend § 112.7 as follows:

a. By revising paragraphs (a)(3) introductory text and (a)(3)(i).

b. By revising paragraphs (c) introductory text and (c)(1).

c. Revising paragraph (g).

d. Revising paragraphs (h) introductory text, (h)(1) and (h)(2).

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

* * * * *

(a) * * *

(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and

connecting pipes. You must also address in your Plan:

(i) The type of oil in each fixed container and its storage capacity. For mobile or portable containers, either provide the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities;

* * * * *

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), except for flowlines and intra-facility gathering lines at an oil production facility, and except as provided in paragraph (k) of this section for qualified oil-filled operational equipment. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs. In determining the method, design, and capacity for secondary containment, you need only to address the typical failure mode, and the most likely quantity of oil that would be discharged. Secondary containment may be either active or passive in design. At a minimum, you must use one of the following prevention systems or its equivalent:

(1) For onshore facilities:

(i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;

(ii) Curbing or drip pans;

(iii) Sumps and collection systems;

(iv) Culverting, gutters, or other drainage systems;

(v) Weirs, booms, or other barriers;

(vi) Spill diversion ponds;

(vii) Retention ponds; or

(viii) Sorbent materials.

* * * * *

(g) *Security (excluding oil production facilities).* Describe in your Plan how you secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

(h) *Facility tank car and tank truck loading/unloading rack (excluding offshore facilities, farms, and oil production facilities).* (1) Where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading/unloading racks. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

(2) Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks or vehicle brake interlock system in the area adjacent to a loading/unloading rack, to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.

* * * * *

Subpart B—[Amended]

7. Amend § 112.8 by revising paragraph (c)(6) to read as follows:

§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding oil production facilities).

* * * * *

(c) * * *

(6) Test or inspect each aboveground container for integrity on a regular schedule and whenever you make material repairs. You must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design (e.g., containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried). Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph (c)(6).

* * * * *

8. Amend § 112.9 as follows:

a. By revising the section heading.

b. By revising the introductory text.

c. By revising paragraphs (c)(2) and (c)(3).

d. By adding paragraph (c)(5).

e. By revising paragraph (d)(3).

f. By adding paragraph (d)(4).

§ 112.9 Spill Prevention, Control, and Countermeasure Plan Requirements for onshore oil production facilities (excluding drilling and workover facilities).

If you are the owner or operator of an onshore oil production facility (excluding a drilling or workover facility), you must:

* * * * *

(c) * * *

(2) Construct all tank battery, separation, and treating facility installations, except for flow-through process vessels, so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Except for flow-through process vessels, periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

* * * * *

(5) *Flow-through process vessels.* (i) In lieu of the requirements in paragraph (c)(3) of this section, periodically and on a regular schedule visually inspect and/or test flow-through process vessels and associated components (e.g., dump valves) for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b).

(ii) Take corrective action or make repairs to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge.

(iii) Promptly remove any accumulations of oil discharges associated with flow-through process vessels.

(iv) If your facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b) within any twelve month period, from flow-through process vessels (excluding discharges that are the result of natural disasters, acts of war, or terrorism) then you must, within six months from the time the facility becomes subject to this paragraph, provide flow-through process vessels with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

(d) * * *

(3) For flowlines and intra-facility gathering lines, unless you have

submitted a response plan under § 112.20, provide in your Plan the following:

(i) An oil spill contingency plan following the provisions of part 109 of this chapter.

(ii) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that might be harmful.

(4) Prepare and implement a written program of flowline/intra-facility gathering line maintenance. The maintenance program must address your procedures to:

(i) Ensure that flowlines and intra-facility gathering lines and associated valves and equipment must be compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment.

(ii) Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b). The frequency and type of testing must allow for the implementation of a contingency plan as described under part 109 of this chapter.

(iii) Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.

(iv) Promptly remove any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

Subpart C—[Amended]

9. Amend § 112.12 by revising the introductory text and paragraph (c)(6) to read as follows:

§ 112.12 Spill Prevention, Control, and Countermeasure Plan Requirements.

If you are the owner or operator of an onshore facility, you must:

* * * * *

(c) * * *

(6) *Bulk storage container inspections.* (i) Except for containers that meet the criteria provided in paragraph (c)(6)(ii) of this section, test or inspect each aboveground container for integrity on a regular schedule and whenever you make material repairs. You must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design (e.g., containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried). Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.

(ii) For bulk storage containers that are subject to 21 CFR part 110, are elevated, constructed of austenitic stainless steel, have no external insulation, and are shop-fabricated, conduct formal visual inspection on a regular schedule. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. You must determine and document in the Plan the appropriate qualifications for personnel performing tests and inspections. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph (c)(6).

* * * * *

10. Add Appendix G to part 112 to read as follows:

APPENDIX G to Part 112-
Tier I Qualified Facility SPCC Plan

This template constitutes the SPCC Plan for the facility, when completed and signed by the owner or operator of a facility that meets the applicability criteria in §112.3(g)(1). This template meets the requirements of 40 CFR part 112. Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or for a facility attended less than 4 hours per day, at the nearest field office.

Facility Description

Facility Name _____

Facility Address _____

City _____ State _____ ZIP _____

County _____ Tel. Number ( ) - _____

Owner/Operator Name _____

Owner/Operator Address _____

City _____ State _____ ZIP _____

County _____ Tel. Number ( ) - _____

I. Self-Certification Statement (§112.6(a)(1))

The owner/operator of a facility certifies that each of the following is true in order to utilize this template to comply with the SPCC requirements:

I _____, certify that the following is accurate:

1. I am familiar with the applicable requirements of 40 CFR part 112;
2. I have visited and examined the facility;
3. This Plan was prepared in accordance with accepted and sound industry practices and standards;
4. Procedures for required inspections and testing have been established in accordance with industry inspection and testing standards or recommended practices;
5. I will fully implement the Plan;
6. This facility meets the following qualification criteria:
   a. The aggregate oil storage capacity of the facility is 10,000 U.S. gallons or less;
   b. The facility has had no single discharge as described in §112.1(b) exceeding 1,000 U.S. gallons and no two discharges as described in §112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years (not including oil discharges as described in §112.1(b) that are the result of natural disasters, acts of war, or terrorism); and
   c. There is no individual oil storage container at the facility with a capacity greater than 5,000 U.S. gallons.
7. This Plan does not deviate from any requirement of 40 CFR part 112 as allowed by §§112.7(a)(2) (environmental equivalence) and 112.7(d) (impracticability of secondary containment).
8. This Plan and individual(s) responsible for implementing this Plan have the full approval of management and I have committed the necessary resources to fully implement this Plan.

I also understand my other obligations relating to the storage of oil at this facility, including, among others:

- To report an oil discharge to navigable waters and adjoining shorelines to the appropriate authorities. Notification information is included in this Plan.
- To review and amend this Plan whenever there is a material change at the facility that affects the potential for an oil discharge, and at least once every 5 years. Reviews and amendments are recorded in an attached log [See Five Year Review Log and Technical Amendment Log in Attachments 1.1 and 1.2.]
- A contingency plan:
  - may be used in lieu of secondary containment for qualified oil-filled operational equipment, in accordance with the requirements under §112.7(k), and
  - must be prepared for flowlines and/or intra-facility gathering lines at an oil production facility.

  A contingency plan must include: an established and documented inspection or monitoring program; an oil spill contingency plan following the provisions of 40 CFR 109; and a written commitment of manpower, equipment and materials to expeditiously remove any quantity of oil discharged that may be harmful. If applicable, a copy of the contingency plan and any additional documentation will be attached to this Plan as Attachment 2.
- By completing this Plan template, I certify that I have satisfied the requirement to prepare and implement a Plan under §112.3 and all of the requirements under §112.6(a).
- I certify that the information contained in this Plan is true.

Signature _____ Title: _____
Name _____ Date: ____/_____/20___

II. Record of Plan Review and Amendments

Five Year Review (§112.5(b)):

Complete a review and evaluation of this SPCC Plan at least once every five years. As a result of the review, amend this Plan within six months to include more effective prevention and control measures for the facility if applicable. Implement any amendment as soon as possible but no later than six months following Plan amendment. Document completion of the review and evaluation, and sign a statement as to whether this Plan requires an amendment. [See Five Year Review Log in Attachment 1.1] If the facility no longer meets Tier I qualified facility eligibility, the owner/operator must revise the Plan to meet Tier II qualified facility requirements, or complete a full PE certified Plan.

Technical amendments (§§112.5(a), (c) and 112.6(a)(2)):

This SPCC Plan will be amended when there is a change in the facility design, construction, operation, or maintenance that materially affects the potential for a discharge to navigable waters or adjoining shorelines. Examples include adding or removing containers, reconstruction, replacement, or installation of piping systems, changes to secondary containment systems, changes in product stored at this facility, or revisions to standard operating procedures.	☐
Any technical amendments to this Plan will be re-certified in accordance with Section I of this Plan template. *[§112.6(a)(2)]* [See Technical Amendment Log in Attachment 1.2]	☐

III. Plan Requirements

1. Oil Storage Containers (§112.7(a)(3)(i)):

This table includes a complete list of all oil storage containers (aboveground containers and completely buried tanks) with capacity of 55 gallons or more, (e.g. tanks & oil-filled equipment.) For mobile/portable containers, estimated number of containers, types of oil, and anticipated capacities are provided.	☐

Oil Storage Container *(indicate whether aboveground (A) or completely buried (B))*	**Type of Oil**	**Shell Capacity (gallons)**

Total Aboveground Storage Capacity _____ gallons
Total Completely Buried Storage Capacity _____ gallons
Facility Total Oil Storage Capacity _____ gallons

2. Secondary Containment and Oil Spill Control (§§112.6(a)(3)(i) and (ii), 112.7(c) and 112.9(c)(2)):

Appropriate containment and/or diversionary structures or equipment* is provided for all oil handling containers, equipment, and transfer areas to prevent a discharge to navigable waters or adjoining shorelines. The entire containment system, including walls and floor, is capable of containing oil and is constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs.	☐

The table below identifies the tanks and containers at the facility with the potential for an oil discharge; the mode of failure; the flow direction and quantity of the discharge; and secondary containment method and containment capacity is provided.

Area	Type of failure (discharge scenario)	Potential discharge volume (gallons)	Direction of flow for uncontained discharge	Secondary containment method*	Secondary containment capacity (gallons)
*Bulk Storage Containers and Mobile/Portable Containers***					
Oil-filled Operational Equipment (e.g., hydraulic equipment, transformers)†					
Piping, Valves, etc.					
Product Transfer Areas (location where oil is loaded to or from a container, pipe or other piece of equipment.)					
Other Oil-Handling Areas or Oil-Filled Equipment (e.g. flow-through process vessels at an oil production					

facility)					

* Use one of the following methods of secondary containment or its equivalent: (1) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (2) Curbing; (3) Culverting, gutters, or other drainage systems; (4) Weirs, booms, or other barriers; (5) Spill diversion ponds; (6) Retention ponds; or (7) Sorbent materials.
** For storage tanks and bulk storage containers, the secondary containment capacity must be at least the capacity of the largest container plus additional capacity to contain rainfall or other precipitation.
† For oil-filled operational equipment: Document in the table above if alternative measures to secondary containment (as described in §112.7(k)) are implemented at the facility.

3. Inspections, Testing, Recordkeeping and Personnel Training (§§112.7(e) and (f), 112.8(c)(6), 112.12(c)(6)):

Inspections, tests, and records	
An inspection and testing program is implemented for all aboveground storage containers and piping at this facility. *[§112.8(c)(6), 112.12(c)(6)]* The following is a description of the inspection and testing program (e.g. reference to industry standard utilized, scope, frequency, method of inspection or test, and person conducting the inspection) for all aboveground storage containers and piping at this facility:	☐
Inspections, tests, and records are conducted in accordance with written procedures developed for the facility. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph. *[§112.7(e)]*	☐
A record of the inspections and tests are kept at the facility or with the SPCC Plan for a period of three years. *[§112.7(e)]* [See Inspection Log and Schedule in Attachment 3.1]	☐
Inspections and tests are signed by the appropriate supervisor or inspector. *[§112.7(e)]*	☐
Personnel, training, and discharge prevention procedures [§112.7(f)]	
Oil-handling personnel are trained in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan. *[§112.7(f)]*	☐
A person who reports to facility management is designated and accountable for discharge prevention. *[§112.7(f)]* Name/Title:_____	☐
Discharge prevention briefings are conducted for oil-handling personnel annually to assure adequate understanding of the SPCC Plan for that facility. Such briefings highlight and describe past reportable discharges or failures, malfunctioning components, and any recently developed precautionary measures. *[§112.7(f)]* [See Oil-handling Personnel Training and Briefing Log in Attachment 3.4]	☐

4. Security (excluding oil production facilities) §112.7(g):

Security measures are implemented at this facility to prevent unauthorized access to oil handling, processing, and storage area. The following is a description of how you secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges:	☐

5. Emergency Procedures and Notifications (§§112.7(a)(3)(iv) and 112.7(a)(5)):

The following is a description of the immediate actions to be taken by facility personnel in the event of a discharge to navigable waters or adjoining shorelines *[§112.7(a)(3)(iv) and 112.7(a)(5)]*:	☐

6. Contact List (§112.7(a)(3)(vi)):

Contact Organization / Person	**Telephone Number**
National Response Center (NRC)	1-800-424-8802
Cleanup Contractor(s)	
Key Facility Personnel	
Designated Person Accountable for Discharge Prevention:	Office:
	Emergency:
	Office:
	Emergency:
	Office:
	Emergency:
	Office:
	Emergency:
State Oil Pollution Control Agencies	
Other State, Federal, and Local Agencies	
Local Fire Department	
Local Police Department	
Hospital	
Other Contact References (e.g., downstream water intakes or neighboring facilities)	

You must submit the following information to the RA: (1) Name of the facility; (2) Your name; (3) Location of the facility; (4) Maximum storage or handling capacity of the facility and normal daily throughput; (5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements; (6) An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary; (7) The cause of the reportable discharge, including a failure analysis of the system or subsystem in which the failure occurred; and (8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence

7. NRC Notification Procedure (§112.7(a)(4) and (a)(5)):

In the event of a discharge of oil to navigable waters or adjoining shorelines, the following information identified in Attachment 4 will be provided to the National Response Center [see the Discharge Notification Form in Attachment 4]: *[§112.7(a)(4)]*	☐
• The exact address or location and phone number of the facility; • Date and time of the discharge; • Type of material discharged; • Estimate of the total quantity discharged; • Estimate of the quantity discharged to navigable waters; • Source of the discharge; • Description of all affected media; • Cause of the discharge; • Any damages or injuries caused by the discharge; • Actions being used to stop, remove, and mitigate the effects of the discharge; • Whether an evacuation may be needed; and • Names of individuals and/or organizations who have also been contacted.	

8. SPCC Spill Reporting Requirements (Report within 60 days) (§112.4):

Submit information to the EPA Regional Administrator (RA) and the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located within 60 days from one of the following discharge events:

- A single discharge of more than 1,000 U.S. gallons of oil to navigable waters or adjoining shorelines or
- Two discharges to navigable waters or adjoining shorelines each more than 42 U.S. gallons of oil occurring within any twelve month period

* * * * *

NOTE: Complete one of the following sections (A, B or C) as appropriate for the facility type.

A. Onshore Facilities (excluding production) (§§112.8(b) and (d), 112.12(b) and (d)):

The owner or operator must meet the general rule requirements as well as requirements under this section.

Drainage from diked storage areas are restrained by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. *[§§112.8(b)(1) and 112.12(b)(1)]*	☐
Valves of manual, open-and-closed design are used for the drainage of diked areas. *[§§112.8(b)(2) and 112.12(b)(2)]*	☐
The containers at the facility are compatible with materials stored and conditions of storage such as pressure and temperature. *[§§112.8(c)(1) and 112.12(c)(1)]*	☐
Secondary containment for the bulk storage containers (including mobile/portable oil storage containers) holds the capacity of the largest container plus additional capacity to contain precipitation. Mobile or portable oil storage containers are positioned to prevent a discharge as described in §112.1(b). *[§112.6(a)(3)(ii)]*	☐
If uncontaminated rainwater from diked areas drains into a storm drain or open watercourse the following procedures will be implemented at the facility: *[§§112.8(c)(3) and 112.12(c)(3)]* • Bypass valve is normally sealed closed • Retained rainwater is inspected to ensure that its presence will not cause a discharge to navigable waters and adjoining shorelines • Bypass valve is opened and resealed under responsible supervision • Adequate records of drainage are kept [See Dike Drainage Log in Attachment 3.3]	☐ ☐ ☐ ☐
For completely buried metallic tanks installed on or after January 10, 1974 at this facility *[§§112.8(c)(4) and 112.12(c)(4)]*: • Tanks have corrosion protection with coatings or cathodic protection compatible with local soil conditions. • Regular leak testing is conducted.	☐ ☐
For partially buried or bunkered metallic tanks *[§112.8(c)(5) and §112.12(c)(5)]*: • Tanks have corrosion protection with coatings or cathodic protection compatible with local soil conditions.	☐
Each aboveground container is tested or inspected for integrity on a regular schedule and whenever material repairs are made. Scope and frequency of the inspections and inspector qualifications are in accordance with industry standards. Container supports and foundations are regularly inspected. [See Inspection Log and Schedule and Bulk Storage Container Inspection Schedule in Attachments 3.1 and 3.2] *[§112.8(c)(6) and §112.12(c)(6)(i)]*	☐ or NA
Outsides of containers are frequently inspected for signs of deterioration, discharges, or accumulation of oil inside diked areas. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(c)(6) and 112.12(c)(6)]*	☐
For bulk storage containers that are subject to 21 CFR part 110, are shop-fabricated, constructed of austenitic stainless steel, with a manhole and have no external insulation, formal visual inspection is conducted on a regular schedule. Appropriate qualifications for personnel performing tests and inspections are documented. [See Inspection Log and Schedule and Bulk Storage Container Inspection Schedule in Attachments 3.1 and 3.2] *[§112.12(c)(6)(ii)]*	☐ or NA
Each container is provided with a system or documented procedure to prevent overfills for the container, Describe: Liquid level sensing devices are regularly tested to ensure proper operation [See Inspection Log and Schedule in Attachment 3.1]. *[§112.6(a)(3)(iii)]*	☐ ☐ or NA

Visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts are promptly corrected and oil in diked areas is promptly removed. *[§§112.8(c)(10) and 112.12(c)(10)]*	☐
Aboveground valves, piping, and appurtenances such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces are inspected regularly. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(d)(4) and 112.12(d)(4)]*	☐
Integrity and leak testing are conducted on buried piping at the time of installation, modification, construction, relocation, or replacement. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(d)(4) and 112.12(d)(4)]*	☐

B. Onshore Oil Production Facilities (excluding drilling and workover facilities) (§112.9(b), (c), and (d)):

The owner or operator must meet the general rule requirements as well as the requirements under this section.

At tank batteries, separation and treating areas, drainage is closed and sealed except when draining uncontaminated rainwater. Accumulated oil on the rainwater is returned to storage or disposed of in accordance with legally approved methods. *[§112.9(b)(1)]*	☐
Prior to drainage, diked areas are inspected and *[§112.9(b)(1)]*: • Retained rainwater is inspected to ensure that its presence will not cause a discharge to navigable waters • Bypass valve is opened and resealed under responsible supervision • Adequate records of drainage are kept [See Dike Drainage Log in Attachment 3.3]	☐ ☐ ☐
Field drainage systems and oil traps, sumps, or skimmers are inspected at regularly scheduled intervals for oil, and accumulations of oil are promptly removed [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(b)(2)]*	☐
The containers used at this facility are compatible with materials stored and conditions of storage. *[§112.9(c)(1)]*	☐
All tank battery, separation, and treating facility installations (except for flow-through process vessels) are constructed with a capacity to hold the largest single container plus additional capacity to contain rainfall. Drainage from undiked areas is safely confined in a catchment basin or holding pond. *[§112.9(c)(2)]*	☐
Except for flow-through process vessels, containers that are on or above the surface of the ground, including foundations and supports, are visually inspected for deterioration and maintenance needs on a regular schedule. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(c)(3)]*	☐
New and old tank batteries at this facility are engineered/updated in accordance with good engineering practices to prevent discharges including at least one of the following: (i) adequate container capacity to prevent overfill if regular pumping/gauging is delayed; (ii) overflow equalizing lines between containers so that a full container can overflow to an adjacent container; (iii) vacuum protection to prevent container collapse; or (iv) high level sensors to generate and transmit an alarm to the computer where the facility is subject to a computer production control system. *[§112.9(c)(4)]*	☐
Flow-through process vessels and associated components are: • Visually inspected and/or tested periodically and on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge to navigable waters; and • Corrective action or repairs are applied to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge; and	☐ ☐

• Any accumulations of oil discharges associated with flow-through process vessels are promptly removed; and • Flow-through process vessels are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation within six months of a discharge from flow-through process vessels of more than 1,000 U.S. gallons of oil in a single discharge as described in §112.1(b), or a discharge more than 42 U.S. gallons of oil in each of two discharges as described in §112.1(b) within any twelve month period. *[§112.9(c)(5)]* *(Leave blank until such time that this provision is applicable.)*	☐ ☐
All aboveground valves and piping associated with transfer operations are inspected periodically and upon a regular schedule. The general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items are included in the inspection. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(1)]*	☐
An oil spill contingency plan and written commitment of resources is provided for flowlines and intra-facility gathering lines [See Oil Spill Contingency Plan and Checklist in Attachment 2 and Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(3)]*	☐
A flowline/intra-facility gathering line maintenance program to prevent discharges from each flowline has been established at this facility. The maintenance program addresses each of the following:	☐
• Flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment;	☐
• Flowlines, intra-facility gathering lines and associated appurtenances are visually inspected and/or tested on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in §112.1(b). The frequency and type of testing allows for the implementation of a contingency plan as described under part 109 of this chapter.	☐
• Corrective action and repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.	☐
• Accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances are promptly removed. *[§112.9(d)(4)]*	☐
The following is a description of the flowline/intra-facility gathering line maintenance program implemented at this facility:	

C. Onshore Oil Drilling and Workover Facilities (§112.10(b), (c) and (d)):

The owner or operator must meet the general rule requirements as well as the requirements under this section.

Mobile drilling or worker equipment is positioned or located to prevent discharge as described in §112.1(b). *[§112.10(b)]*	☐
Catchment basins or diversion structures are provided to intercept and contain discharges of fuel, crude oil, or oily drilling fluids. *[§112.10(c)]*	☐
A blowout prevention (BOP) assembly and well control system was installed before drilling below any casing string or during workover operations. *[§112.10(d)]*	☐
The BOP assembly and well control system is capable of controlling any well-head pressure that may be encountered while the BOP assembly and well control system are on the well. *[§112.10(d)]*	☐

ATTACHMENT 1 – Five Year Review and Technical Amendment Logs

ATTACHMENT 1.1 – Five Year Review Log

I have completed a review and evaluation of the SPCC Plan for this facility, and will/will not amend this Plan as a result.

Review Date	Plan Amendment		Name and signature of person authorized to review this Plan
	Will Amend	Will Not Amend	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	

ATTACHMENT 1.2 – Technical Amendment Log

Any technical amendments to this Plan will be re-certified in accordance with Section I of this Plan template.

Review Date	Description of Technical Amendment	Name and signature of person certifying this technical amendment

ATTACHMENT 2 – Oil Spill Contingency Plan and Checklist

An oil spill contingency plan and written commitment of resources is required for:

- Flowlines and intra-facility gathering lines at oil production facilities and
- Qualified oil-filled operational equipment in place of secondary containment.

An oil spill contingency plan meeting the provisions of 40 CFR part 109, as described below, and a written commitment of manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful is attached to this Plan.	☐

Complete the checklist below to verify that the necessary operations outlined in 40 CFR Part 109 - Criteria for State, Local and Regional Oil Removal Contingency Plans have been performed.

109.5–Development and implementation criteria for State, local and regional oil removal contingency plans*	
(a) Definition of the authorities, responsibilities and duties of all persons, organizations or agencies which are to be involved in planning or directing oil removal operations.	☐
(b) Establishment of notification procedures for the purpose of early detection and timely notification of an oil discharge including:	☐
(1) The identification of critical water use areas to facilitate the reporting of and response to oil discharges.	☐
(2) A current list of names, telephone numbers and addresses of the responsible persons (with alternates) and organizations to be notified when an oil discharge is discovered.	☐
(3) Provisions for access to a reliable communications system for timely notification of an oil discharge, and the capability of interconnection with the communications systems established under related oil removal contingency plans, particularly State and National plans (e.g., NCP).	☐
(4) An established, prearranged procedure for requesting assistance during a major disaster or when the situation exceeds the response capability of the State, local or regional authority.	☐
(c) Provisions to assure that full resource capability is known and can be committed during an oil discharge situation including:	☐
(1) The identification and inventory of applicable equipment, materials and supplies which are available locally and regionally.	☐
(2) An estimate of the equipment, materials and supplies which would be required to remove the maximum oil discharge to be anticipated.	☐
(3) Development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials and supplies to be used in responding to such a discharge.	☐
(d) Provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including:	☐
(1) Specification of an oil discharge response operating team consisting of trained, prepared and available operating personnel.	☐

(2) Predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under existing national and regional contingency plans.	☐
(3) A preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response operations.	☐
(4) Provisions for varying degrees of response effort depending on the severity of the oil discharge.	☐
(5) Specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses.	☐
(6) Specific and well defined procedures to facilitate recovery of damages and enforcement measures as provided for by State and local statutes and ordinances.	☐

*** The contingency plan should be consistent with all applicable state and local plans, Area Contingency Plans, and the National Contingency Plan (NCP).**

ATTACHMENT 3 – Inspections, Dike Drainage and Personnel Training Logs

ATTACHMENT 3.1 – Inspection Log and Schedule

Date of Inspection	Container / Piping / Equipment	Describe Scope (or cite Industry Standard)	Observations	Name/ Signature of Inspector	Records maintained separately*
					☐
					☐
					☐
					☐
					☐
					☐

* Indicate in the table above if records of facility inspections are maintained separately at this facility.

ATTACHMENT 3.2 – Bulk Storage Container Inspection Schedule – onshore facilities (excluding production):

To comply with integrity inspection requirement for bulk storage containers, inspect/test each aboveground bulk storage container on a regular schedule in accordance with a recognized container inspection standard based on the minimum requirements in the following table.

Container Size and Design Specification	**Inspection requirement**
Portable containers (including drums, totes, and intermodal bulk containers (IBC))	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas
55 to 1,100 gallon with sized secondary containment	
1,101 to 5,000 gallon with sized secondary containment and elevated above the secondary containment floor	
1,101 to 5,000 gallons with sized secondary containment and NOT elevated above the secondary containment floor	Inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas, plus any other specific integrity tests that may be required per industry inspection standards

ATTACHMENT 3.3 – Dike Drainage Log

Date	Bypass valve sealed closed	Rainwater inspected to be sure no oil (or sheen) is visible	Open bypass valve and reseal it following drainage	Drainage activity supervised	Observations	Signature of Inspector
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		

ATTACHMENT 3.4 – Oil-handling Personnel Training and Briefing Log

Date	Description / Scope	Attendees

ATTACHMENT 4 – Discharge Notification Form

In the event of a discharge of oil to navigable waters or adjoining shorelines, the following information will be provided to the National Response Center [also see the notification information provided in Section 7 of the Plan]:

Discharge/Discovery Date		Time	
Facility Name			
Facility Location (Address)			
Name of reporting individual		Telephone #	
Type of material discharged		Estimated total quantity discharged	Gallons/Barrels
Source of the discharge		Media affected	☐ Soil ☐ Water (specify) _____ ☐ Other (specify) _____
Actions taken			
Damage or injuries	☐ No ☐ Yes (specify)	Evacuation needed?	☐ No ☐ Yes (specify)
Organizations and individuals contacted	☐ National Response Center 800-424-8802 ☐ Cleanup contractor (Specify) ☐ Facility personnel (Specify) ☐ State Agency (Specify) ☐ Other (Specify)		Time _____ Time _____ Time _____ Time _____ Time _____

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Federal Register

Monday,
October 15, 2007

Part III

Department of Housing and Urban Development

24 CFR Part 5
Pet Ownership for the Elderly and Persons With Disabilities; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5127–P–01]

RIN 2501–AD31

Pet Ownership for the Elderly and Persons With Disabilities

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations that apply to pet ownership in HUD-assisted housing for the elderly and persons with disabilities by conforming the exceptions for animals that assist persons with disabilities to those that apply to HUD's public housing programs, as defined in section 3(b) of the United States Housing Act.

DATES: *Comment Due Date:* December 14, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through the federal eRulemaking portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically so that HUD, in turn, can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not accepted. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–2000; telephone number (202) 619–8046 (this is not a toll-free number). Hearing- or speech-impaired persons may contact this number by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Certain animals provide assistance or perform tasks for the benefit of a person with a disability. These animals, often referred to as ''assistance animals,'' ''service animals,'' ''support animals,'' or ''therapy animals,'' provide disability-related functions including, but not limited to, guiding visually impaired individuals, alerting hearing-impaired persons to sounds and noises, providing protection or rescue assistance, pulling a wheelchair, seeking and retrieving items, alerting individuals to impending seizures, and providing emotional support to persons who have a disability-related need for such support.

The pet ownership policies and general requirements for pet ownership applicable to public housing and multifamily housing projects for the elderly or persons with disabilities are described in HUD's regulations at 24 CFR part 5, subpart C. Pet ownership by residents in public housing, except housing projects for the elderly or persons with disabilities and not including housing assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f *et seq.*), is addressed in HUD's regulations at 24 CFR part 960, subpart G. Under these regulations, in addition to HUD's pet ownership policies, public housing agencies (PHAs) and owners may develop and impose additional, reasonable requirements for pet ownership by tenants and residents. See 24 CFR part 5, subpart C and 24 CFR part 960, subpart G for descriptions of applicable policies and requirements.

Parts 5 and 960 contain minor differences in pet ownership exclusion policies and requirements for animals that assist persons with disabilities. In 24 CFR 5.303, entitled, ''Exclusion for animals that assist persons with disabilities,'' project owners and PHAs may not apply or enforce any pet rules developed under part 5 against individuals with animals that are used to assist persons with disabilities. Part 5, however, states that owners or PHAs may require that assistance animals qualify for the exclusion and that owners must grant this exclusion under certain circumstances. These circumstances include: (1) The tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is a person with a disability; (2) the animal has been trained to assist persons with that specific disability; and (3) the animal actually assists the person with a disability.

In contrast, § 960.705 states that PHAs may not apply or enforce pet policies established under 24 CFR part 960 against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to such animals that reside in public housing, other than housing developments for the elderly or persons with disabilities, and to such animals that visit these developments. The provisions in part 960 do not contain the tenant certification or the animal training requirements found in § 5.303. PHAs however, are authorized to verify that the animal qualifies as a reasonable accommodation under Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act (the Acts). An animal qualifies as a reasonable accommodation if: (1) An individual has a disability, as defined in the Acts, (2) the animal is needed to assist with the disability, and (3) the individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides.

II. This Proposed Rule

This proposed rule would revise HUD's regulations that apply to assistance animals in HUD-assisted housing, including public housing serving elderly and disabled families, by making the assistance animal exceptions in those regulations similar to the requirements and procedures that currently apply to HUD's other public housing programs. HUD is undertaking this effort to improve uniformity in its regulations.

In order to conform the assistance animal provisions for housing serving elderly or disabled families in 24 CFR 5.303 to the public housing provisions, excluding section 8, in 24 CFR 960.705, HUD is proposing minor revisions to § 5.303.

First, HUD would revise § 5.303(a) to broaden the functions of assistance animals to state that the exclusion applies to animals that ''assist, support, or provide service to persons with disabilities.'' The current regulation is limited to animals that ''assist persons with disabilities.''

Second, § 5.303(a) would be revised to state that project owners and PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This language is

adopted from the similar provision in § 960.705, for uniformity.

Finally, in order to conform to the provisions in § 960.705, HUD proposes to remove the tenant certification and animal training requirements in § 5.303(a)(1)(i)–(iii). Removing the training and certification requirements will ensure uniformity in HUD's regulations.

III. Findings and Certifications

Environmental Impact

This proposed rule involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would conform the assistance animal requirements in certain housing for the elderly or persons with disabilities with the provisions for assistance animals in other HUD-assisted housing programs. Specifically, this change would remove the training and certification requirements. Such a change is likely to decrease the administrative burden on project owners to process assistance animal certifications. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on state, local, or tribal government or the private sector within the meaning of UMRA.

Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 5 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

2. Revise § 5.303 to read as follows:

§ 5.303 Exclusion for animals that assist persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist, support, or provide service to persons with disabilities. Project owners and PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.

(b) Nothing in this subpart C:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes project owners or PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that project owners or PHAs may have to regulate animals that assist persons with disabilities, under federal, state, or local law.

Dated: September 18, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–20196 Filed 10–12–07; 8:45 am]

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Federal Register

Monday,
October 15, 2007

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2007–08 Early and Late Seasons; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AV12

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2007–08 Early and Late Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early and late season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on October 15, 2007.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703/358–1967.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 31, 2007, **Federal Register** (72 FR 50596), we proposed special migratory bird hunting regulations for the 2007–08 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 11, 2007, **Federal Register** (72 FR 18328), we requested that tribes desiring special hunting regulations in the 2007–08 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

The proposed rule included generalized regulations for both early- and late-season hunting, and this rulemaking addresses both the early- and late-season proposals. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged doves. Late seasons begin about September 23 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 31 proposed rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey, population status reports for sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons, and the status and harvest of waterfowl. The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 2007–08 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. The comment period for the proposed rule, published on August 31, 2007, closed on September 10, 2007.

Great Lakes Indian Fish and Wildlife Commission's (GLIFWC) Proposal

We received one comment in response to our April 11, 2007, notice of intent announcing regulations for migratory bird hunting by Native American GLIFWC's Tribal members, and we received one comment in response to our August 31, 2007, proposed rule. The Wisconsin Department of Natural Resources (WDNR) had biological and law enforcement concerns regarding the GLIFWC's proposal that requested: (1) Increased bag limits for most species (from 20 to 40 birds per day); (2) removal of species restrictions on bag limits for duck harvest and extension of hunting hours; and (3) increased duck hunting season dates beginning September 1. WDNR commented that these proposed changes could increase harvest, which would create a conservation concern to locally breeding duck populations. WDNR also believed that the removal of species restrictions and extension of hunting hours would be inconsistent with the Service's basic management philosophy on ducks. WDNR's law enforcement personnel also expressed concern over the extended shooting hours and the potential for confusion and conflict with different waterfowl shooting hours among Tribal and non-Tribal hunters on the same lands and waters.

GLIFWC's comment responded to our August 31, 2007, proposed rule.

GLIFWC requested removal of the Service's proposed bag limit restrictions on scaup and wood ducks. GLIFWC also noted that they were committed to appropriate harvest monitoring.

Service Response: As we stated in the August 31, 2007, proposed rule, while we acknowledge that tribal harvest and participation has declined in recent years, we do not believe that GLIFWC's proposal for tribal waterfowl seasons on ceded lands in Wisconsin, Michigan, and Minnesota for the 2007–08 season is the best plan for increasing tribal participation. However, we do approve an increased bag limit for ducks in the 1836 Treaty Area; increased bag limits for geese in the 1836, 1837, and 1842 Treaty Areas; lengthened season dates for all species except mourning doves and woodcock, from December 1–December 31; and extended hunting hours until 15 minutes after sunset. In addition, we will implement a pilot bag limit increase for ducks in the 1837 and 1842 Treaty Areas. More specific discussion follows below.

Overall Daily Bag Limit for Waterfowl

Based on the increased bag limits, GLIFWC is estimating a relatively small additional duck harvest (1000 to 1500). However, it is possible that hunter participation could increase beyond their estimates and could result in a conservation impact, particularly on locally breeding populations, such as wood ducks and mallards. Further, based on the GLIFWC's own harvest data, present daily bag limits do not appear to be a hindrance or limiting factor for Tribal harvest, and increasing the daily bag limit to 40 ducks would be far in excess (more than double) of anything we currently have experience with regarding tribal migratory bird hunting regulations. Until we have additional information on which we could assess potential impacts, we do not favor increasing daily bag limits for ducks to the extent GLIFWC has proposed. In an effort to obtain the necessary information, we will implement a pilot expansion of the daily bag limit to 30 birds per day in the 1837 and 1842 Treaty Areas. We support this with the understanding that we will need to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters.

We do support the increase of the daily bag limits for ducks in the 1836 Treaty Area to bring them more in line with our allowed GLIFWC daily bag limits for ducks in the 1837 and 1842 Treaty Areas. Further, we also support increasing the daily bag limits for geese in the 1837, 1842, and 1836 Treaty Areas. Given the limited goose harvest and the Flyway-wide effort to increase the harvest of resident Canada geese, we see no potential conservation impacts.

Removal of Species Restrictions

We have several concerns with GLIFWC's proposal to remove all species restrictions within the overall duck daily bag limits in the 1837, 1842, and 1836 Treaty Areas. We have a number of duck species that are showing long-term downward population trends (pintails and black ducks), and others for which an increased daily bag limit of 30 birds per day could potentially have conservation impacts (canvasbacks), particularly on locally breeding ducks (mallards). Overharvest of these species in localized areas due to removal of species restrictions could contribute to long-term declines. Removal of species restrictions on these species would be inconsistent with our current conservation concerns. Thus, we support the following species restrictions within the overall daily bag limit in all three of the Treaty Areas: 10 mallards (only 5 of which may be hens), 5 black ducks, 5 pintails, and 5 canvasbacks. We believe these species restrictions are commensurate with each individual species' population status.

In the August 31 proposed rule, we also proposed additional daily bag limit restrictions for scaup and wood ducks (a daily bag limit of 5 for each). We proposed these particular restrictions on these species primarily because scaup have experienced a long-term population decline and wood ducks might be susceptible to local over-harvest. However, GLIFWC notes that neither of these species have had a within bag limit species restriction in the past and that were committed to appropriate harvest monitoring (with the understanding that this monitoring would be sufficient to identify any localized population impacts). We agree with GLIFWC and will work with them to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters.

Expanded Season Dates

Generally, we have tried to limit the opening date of tribal duck seasons to around September 15 for a number of reasons. Foremost among those reasons is that opening the tribal season 2–3 weeks ahead of a State's normal season has the potential to impact locally breeding ducks. In the 1836, 1837 and 1842 Treaty Areas, we believe mallards and wood ducks would be the most susceptible to potential impacts of early September hunting. Birds are naïve to the gun at this time prior to the opening of the general gun season and that could increase the potential for large harvests of resident breeding birds. Thus, we believe that expanding early September duck hunting in the 1836, 1837 and 1842 Treaty Areas would not be in the best interest of the resource. However, we have less concern about allowing the extension on the end of the season for the month of December and support this portion of GLIFWC's proposal. In most instances, many waterfowl will have already migrated.

Expanded Shooting Hours

Normally, shooting hours for migratory game birds are one-half hour before sunrise to sunset. A number of reasons and concerns have been cited for extending shooting hours past sunset. Potential impacts to some locally breeding populations (e.g., wood ducks), hunter safety, difficulty of identifying birds, retrieval of downed birds, and impacts on law enforcement are some of the normal concerns raised when discussing potential expansions of shooting hours. However, despite these concerns, we support the expansion of shooting hours by 15 minutes after sunset in the 1837, 1842, and 1836 Treaty Areas. We have previously supported this in other tribal areas and have not been made aware of any wide-scale problems. Further, we believe the continuation of a specific species restriction within the daily bag limit for mallards, and the implementation of a species restriction within the daily bag limit for wood ducks, will allay potential conservation concerns for these species. We realize that, when implemented with all the other proposed changes in GLIFWC's tribal seasons, the extension of shooting hours could have conservation impacts. Thus, we are supporting this proposal with the understanding that we will need to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters.

As we stated last year (71 FR 55076, September 20, 2006), we are willing to meet with the GLIFWC to explore possible ways to increase tribal participation in migratory bird hunting opportunities. Further, we appreciate the opportunity we had to meet with the Tribes last winter to discuss the mutual concerns we have for the migratory bird resource and future hunting opportunities. We note that GLIFWC's proposal this year clearly responds to some of the important concerns we expressed at that time and we look

forward to continuing our dialogue in the future.

Yankton Sioux Tribe's Proposal

We received one comment in response to our August 31, 2007, proposed rule. The State of South Dakota objects to the proposed special hunting regulations for the Yankton Sioux Tribe. South Dakota believes that the regulations are flawed because (1) they incorrectly assume the existence of reservation boundaries, and specifically assume the continued existence of the 1858 Reservation boundaries for a Yankton Sioux ''Reservation'' and (2) they incorrectly assume that merely placing land into trust makes it ''Indian country.''

Service Response: The State's reading of our proposal is incorrect. Nothing in the **Federal Register** language refers to the 1858 boundaries. Our action does not recognize (nor could it) any particular boundary or the inclusion or exclusion of lands within the Yankton Sioux reservation or as ''Indian country.'' This action only codifies the migratory bird hunting rules of the Yankton Sioux Tribe that will apply on whatever lands are under its jurisdiction.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available (see **ADDRESSES**).

Annual NEPA considerations are covered under a separate Environmental Assessment (EA), ''Duck Hunting Regulations for 2007–08,'' and an August 27, 2007, Finding of No Significant Impact (FONSI). Copies of the EA and FONSI are available upon request from the address indicated under **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as we announced in a March 9, 2006, **Federal Register** notice (71 FR 12216). A scoping report summarizing the scoping comments and scoping meetings is available either at the address indicated under **ADDRESSES** or on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final regulations reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the total consumer surplus of the annual duck hunting frameworks is on the order of $222 to $360 million, with a mid-point estimate of $291 million. We plan to perform a full update of the analysis in 2008. Copies of the updated analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the duck hunters would spend between $291 million and $473.5 million at small businesses in 2007. We plan to perform a full update of the analysis in 2008 when the full results from the 2006 National Hunting and Fishing Survey are available. Copies of the updated analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (PRA). There are no new information collections in this rule that would require OMB approval under the PRA. The existing various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals process, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters).

Doves

Season Dates: Open September 1, through September 15, 2007; then open November 10, through December 24, 2007.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

Ducks (including mergansers)

Season Dates: Open October 13, 2007, through January 27, 2008.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, and three scaup. The seasons on canvasback and pintail are closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open October 20, 2007, through January 27, 2008.

Daily Bag and Possession Limits: Three geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Shooting hours are one-half hour before sunrise to sunset for all hunts except early season Dove which is one-half hour before sunrise to noon. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Hunters).

Tribal Members Only

Ducks (including mergansers)

Season Dates: Open September 2, 2007, through March 9, 2008.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (including mergansers)

Season Dates: Open September 30, 2007, through January 12, 2008.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, two canvasback, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open September 30, 2007, through January 12, 2008.

Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open September 30, 2007, through January 12, 2008.

Daily Bag and Possession Limits: Three and six geese, respectively.

General Conditions: Tribal and Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters).

Sandhill Cranes

Season Dates: Open September 11, through October 17, 2007.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Ducks

Season Dates: Open October 2, through December 14, 2007.

Daily Bag and Possession Limits: The daily bag limit is 5 ducks, with species and sex restrictions as follows: 2 scaup, 2 redheads, and 2 wood ducks, and only 1 duck from the following group—hen mallard, mottled duck, pintail, canvasback. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 16, 2007, through January 18, 2008.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open September 25, through December 19, 2007.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open February 10, 2008, through March 10, 2008.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions: The possession limit is twice the daily bag limit. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).

All seasons in Minnesota, 1854 and 1837 Treaty Zones:

Doves

Season Dates: Open September 1, through October 30, 2007.

Daily Bag Limit: 30 doves.

Ducks and Mergansers

Season Dates: Open September 15, through December 2, 2007.

Daily Bag Limit for Ducks: 12 ducks, including no more than 12 mallards (only 3 of which may be hens), 3 black ducks, 6 scaup, 6 wood ducks, 6 redheads, 3 pintails and 3 canvasbacks.

Daily Bag Limit for Mergansers: 15 mergansers, including no more than 6 hooded mergansers.

Canada Geese

Season Dates: Open September 1, through December 2, 2007.

Daily Bag Limit: 12 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 15, through December 2, 2007.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1, through December 2, 2007.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. There is no possession limit.

Common Snipe and Woodcock

Season Dates: Open September 1, through December 2, 2007.

Daily Bag Limit: Eight snipe and three woodcock.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 22, 2007, through January 21, 2008.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, through November 30, and open January 1, 2008, through February 8, 2008.

Daily Bag Limit: Five geese.

Other Geese (white-fronted geese and brant)

Season Dates: Open September 20, through November 30, 2007.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2007.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: Open September 1, through November 14, 2007.

Daily Bag Limit: 10 mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).

Ducks:

A. Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 31, 2007.

Daily Bag Limit: 30 ducks, including no more than 10 mallards (only 5 of which may be hens), 5 black ducks, 5 scaup, 5 pintails, 5 wood ducks, and 5 canvasbacks.

B. Michigan 1836 Treaty Area:

Season Dates: Begin September 15 and end December 31, 2007.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 5 black ducks, 5 scaup, 5 pintails, 5 wood ducks, and 5 canvasbacks.

Mergansers: All Ceded Areas:

Season Dates: Begin September 15 and end December 31, 2007.

Daily Bag Limit: 10 mergansers.

Geese: All Ceded Areas:

Season Dates: Begin September 1 and end December 31, 2007. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds:

A. Coots and Common Moorhens (Common Gallinules):

Season Dates: Begin September 1 and end December 31, 2007.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails:

Season Dates: Begin September 1 and end December 31, 2007.

Daily Bag Limit: 20, singly or in the aggregate.

C. Common Snipe:

Season Dates: Begin September 15 and end December 1, 2007.

Daily Bag Limit: 16 common.

D. Woodcock:

Season Dates: Begin September 5 and end December 1, 2007.

Daily Bag Limit: 10 woodcock.

E. Mourning Dove: 1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end October 30, 2007.

Daily Bag Limit: 15.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective sections 10.05(2)(h) of the model ceded territory conservation

codes will be amended to include language which parallels that in place for non-tribal members as published at 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective sections 10.05(2)(b) of the model ceded territory conservation codes will be removed.

6. Hunting hours shall be from a half hour before sunrise to 15 minutes after sunset.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).

Ducks (including mergansers)

Season Dates: Open October 13, through November 30, 2007.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, one canvasback, two redheads, and three scaup. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 13, through November 30, 2007.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).

Nontribal Hunters on Reservation

Ducks

Season Dates: Open September 22, 2007, through January 27, 2008. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays, and for a continuous period in the months of October and November, not to exceed 107 days total. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: seven ducks and mergansers, including no more than two female mallards, one pintail, two canvasbacks, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through September 16, 2007, for the early-season, and open October 1, 2007, through January 27, 2008, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 and 10, respectively, for the early season, and 4 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2007, through January 31, 2008.

Daily Bag and Possession Limits: seven ducks and mergansers, including no more than two female mallards, one pintail, two canvasbacks, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2007, through January 31, 2008.

Daily Bag Limit: 4 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only).

Ducks

Season Dates: Open October 1, 2007, through January 28, 2008.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines. Nontoxic shot is required. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(j) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).

Ducks

Season Dates: Open September 22, through December 31, 2007.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 1, through December 31, 2007.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(k) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2007, through January 20, 2008.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, through February 8, 2008.

Daily Bag and Possession Limits: Five Canada geese and possession limit is twice the daily bag limit.

White-fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 20, through November 30, 2007.

Daily Bag and Possession Limits: Five birds and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2007.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

A. All tribal members are required to obtain a valid tribal resource card and 2007–08 hunting license.

B. Except as modified by the Service rules adopted in response to this

proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(l) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2007, through January 20, 2008.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Coots and Gallinules

Season Dates: Same as ducks.

Daily Bag Limits: 12.

Canada Geese

Season Dates: Open September 1, 2007, through February 8, 2008.

Daily Bag Limit: Five geese.

White-fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, through November 30, 2007.

Daily Bag Limit: 10 of each species.

Sora Rails, Snipe, and Mourning Doves

Season Dates: Open September 1, through November 14, 2007.

Daily Bag Limit: 10 of each species.

Woodcock

Season Dates: Open September 1, through November 14, 2007.

Daily Bag Limit: Five woodcock.

General: Possession limits are twice the daily bag limits. These amended regulations parallel all Federal regulations contained in 50 CFR part 20.

(m) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).

Tribal Members

Ducks, Mergansers and Coots

Season Dates: Open September 22, 2007, through March 10, 2008.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 13, 2007, through March 10, 2008.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 6, 2007, through March 10, 2008.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 13, 2007, through March 10, 2008.

Daily Bag and Possession Limits: 20 and 40, respectively.

Nontribal Hunters

Ducks (including mergansers and coots)

Season Dates: Open October 13, 2007, through January 17, 2008.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, one canvasback, two redheads, two wood ducks, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 27, 2007, through February 10, 2008.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 13, 2007, through December 23, 2007.

Daily Bag and Possession Limits: One and two, respectively.

Light Geese

Season Dates: Open October 13, 2007, through January 13, 2008, and open February 26, through March 10, 2008.

Daily Bag and Possession Limits: 20 and 40, respectively.

General: Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

(n) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only) Ducks.

Season Dates: Open September 22, through December 30, 2007.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 22, through December 30, 2007.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2007, through February 15, 2008.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 22, through December 30, 2007.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 22, through December 30, 2007.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 22, through December 30, 2007.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 22, through December 30, 2007.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

(o) Makah Indian Tribe, Neah Bay, Washington (Tribal Members).

Band-tailed Pigeons

Season Dates: Open September 1, through October 31, 2007.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 22, 2007, through January 20, 2008.

Daily Bag Limit: Seven ducks including no more than one redhead, one pintail, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 22, 2007, through January 20, 2008.

Daily Bag Limit: Four geese including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.

General

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also imposed by the Tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area (home, business, or recreational area) and may not be discharged in the direction of a road; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Only steel or bismuth shot for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl.

(p) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons

Season Dates: Open September 1, through September 30, 2007.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through September 30, 2007.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (including mergansers)

Season Dates: Open September 22, 2007, through January 6, 2008.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 22, 2007, through January 6, 2008.

Daily Bag and Possession Limits: Four and eight geese, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(q) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).* Ducks (including mergansers)

Season Dates: Open September 22, through November 16, 2007, and open November 26, through December 9, 2007.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through November 16 and open November 26, through December 30, 2007.

Daily Bag and Possession Limits: Three and six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 8, through November 11, 2007.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 11, 2007.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(r) *Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).*

Ducks

Season Dates: Open October 7, 2007, through January 19, 2008.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, two canvasback, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 7 and 14 mergansers, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open October 7, 2007, through January 19, 2008.

Daily Bag and Possession Limits: Four light geese and four dark geese. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(s) Skokomish Tribe, Shelton, Washington (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 16, through December 31, 2007.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, through December 31, 2007.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2007, through February 15, 2008.

Daily Bag and Possession Limits: Two brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 16, through December 31, 2007.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 16, through December 31, 2007.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, through December 31, 2007.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 16, through December 31, 2007.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20, such as shooting hours and manner of take.

(t) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 1, 2007, through January 15, 2008.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2007, through January 15, 2008.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, through December 31, 2007.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2007, through January 15, 2008.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2007, and through January 15, 2008.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 1, through December 31, 2007.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(u) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).

Ducks (including mergansers)

Season Dates: Open October 1, 2007, through February 15, 2008.

Daily Bag and Possession Limits: 10 ducks, including no more than 7 mallards of which only 3 may be hen mallards, 3 pintail, 3 canvasback, 3 scaup, and 3 redheads. The possession limit is twice the daily bag limit.

Coot

Season Dates: October 1, 2007, through January 31, 2008.

Daily Bag and Possession Limits: 25 and 50, respectively.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Six and twelve, respectively.

Brant

Season Dates: Open October 1, 2007, through January 31, 2008.

Daily Bag and Possession Limits: Three and six, respectively.

Snipe

Season Dates: Open October 1, 2007, through January 31, 2008.

Daily Bag and Possession Limits: 10 and 20, respectively.

Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(v) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only).

Off Reservation

Ducks (including mergansers)

Season Dates: Open September 27, 2007, through February 25, 2008.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

On Reservation

Ducks (including mergansers)

Season Dates: Open September 27, 2007, through March 9, 2008.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: Steps will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource. Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Swinomish Tribal Fish and Game.

(w) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters).

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2007, and through February 29, 2008.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 3 scaup, 2 canvasback, and 2 redheads.

Geese

Season Dates: Open September 15, 2007, and through February 29, 2008.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. For those tribal members who engage in subsistence hunting, the Tribes set a maximum annual bag limit of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2007, through February 29, 2008.

Daily Bag and Possession Limits: 8 and 16, respectively.

Nontribal Hunters

Ducks

Season Dates: Open October 13, 2007, through January 27, 2008.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, three scaup, two canvasback, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 50, respectively

Geese

Season Dates: Open October 13, 2007, through January 27, 2008.

Daily Bag and Possession Limits: Four dark geese, including no more than two cackling Canada geese, and four light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 12, through January 27, 2008.

Daily Bag and Possession Limits: Two and four brant, respectively.

Snipe

Season Dates: Open November 14, 2007, through February 28, 2008.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(x) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).

Mourning Dove

Season Dates: Open September 1, through December 31, 2007.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Ducks

Season Dates: Open October 1, 2007, through February 15, 2008.

Daily Bag and Possession Limits: 15 and 20, respectively.

Coots

Season Dates: Open October 1, 2007, through February 15, 2008.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 1, 2007, through February 15, 2008.

Daily Bag and Possession Limits: The daily bag limits are seven geese and five brant. The possession limits for geese and brant are 10 and 7, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

(y) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).

Teal

Season Dates: Open October 15, 2007, through January 28, 2008.

Daily Bag Limit: Six teal.

Ducks

Season Dates: Open October 31, 2007, through February 27, 2008.

Daily Bag Limit: Six ducks, including no more than two hen mallards, two black ducks, two mottled ducks, two wood ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 15, 2007, through February 29, 2008.

Daily Bag Limit: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Canada Geese

Season Dates: Open September 10, and through September 24, and open October 31, through February 27, 2008.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second.

Snow Geese

Season Dates: Open September 10, 2007, and through September 24, 2007.

Daily Bag Limits: 15 snow geese.

Woodcock

Season Dates: Open October 15, through November 30, 2007.

Daily Bag Limit: Three woodcock.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(z) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 15, through December 16, 2007.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 1 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, through September 28, 2007, and open September 29, through December 16, 2007.

Daily Bag Limit: Eight geese through September 28 and five thereafter.

Coots

Season Dates: Open September 1, through November 30, 2007.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 1, through November 30, 2007.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 1, through November 30, 2007.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 1, through November 30, 2007.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

(aa) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1, through September 15, 2007.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1, through September 15, 2007.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers): Open October 13, 2007, through January 27, 2008.

Daily Bag and Possession Limits: Seven ducks, including no more than three mallards (including no more than two hen mallard), two redheads, three scaup, two canvasback, and one pintail. The possession limit is twice the daily bag limit.

Coots, Moorhens and Gallinules

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate.

The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 13, 2007, through January 27, 2008.

Bag and Possession Limits: Three and six, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

(bb) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters).

Ducks (including Mergansers): Open October 9, through December 21, 2008.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (no more than one hen mallard), two redheads, one mottled duck, one canvasback, one pintail, two scaup, and two wood ducks. The daily bag limit for mergansers is five, of which no more than two can be a hooded merganser. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as other ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

Canada Geese and Brant

Season Dates: Open October 29, 2007, through February 11, 2008.

Daily Bag and Possession Limits: Three geese. The possession limit is twice the daily bag limit.

White-fronted Geese

Season Dates: October 29, 2007, through January 22, 2008.

Daily Bag and Possession Limits: One. The possession limit is twice the daily bag limit.

Light Geese

Season Dates: Open October 29, 2007, through January 19, 2008.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions:

(1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: October 2, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–20240 Filed 10–12–07; 8:45 am]

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Federal Register

Monday,
October 15, 2007

Part V

The President

Proclamation 8189—General Pulaski Memorial Day, 2007

Federal Register
Vol. 72, No. 198
Monday, October 15, 2007

Presidential Documents

Title 3—

The President

Proclamation 8189 of October 10, 2007

General Pulaski Memorial Day, 2007

By the President of the United States of America

A Proclamation

More than two hundred years after the death of General Casimir Pulaski, we honor the life and legacy of a Polish patriot and American Revolutionary War soldier who made the ultimate sacrifice for freedom.

Casimir Pulaski first demonstrated his devotion to the cause of liberty while defending his native Poland and earned a reputation for courage and resolve. He later met Benjamin Franklin in Paris and learned of America's struggle for independence. Inspired by freedom's call, Pulaski joined General George Washington in the American Revolution in 1777 and was soon commissioned as a Brigadier General. General Pulaski recruited and trained a special corps of American, Polish, Irish, French, and German troops, and he became known as ''the Father of the American Cavalry.'' Although he was mortally wounded at the siege of Savannah in 1779, his legacy lives on.

As we celebrate General Pulaski Memorial Day, we honor a son of Poland who stood with our country at the dawn of our independence. Casimir Pulaski's determined efforts in Poland and America remind us of the great contributions Polish Americans have made to our country. Today, we recognize the enduring bond between the Polish and American people, and we are grateful for Poland's efforts in support of freedom and democracy in Afghanistan and Iraq and in the global war on terror.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 2007, as General Pulaski Memorial Day. I urge Americans to commemorate this occasion with appropriate activities and ceremonies honoring General Casimir Pulaski and all those who defend our freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

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Federal Register

Vol. 72, No. 198

Monday, October 15, 2007

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

55655–56008 1
56009–56240 2
56241–56616 3
56617–56882 4
56883–57194 5
57195–57482 9
57483–57838 10
57839–58002 11
58003–58242 12
58243–58468 15

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (See Proclamation 8180) 56171
8180 56171
8181 56613
8182 56615
8183 56879
8184 56881
8185 57477
8186 57479
8187 57481
8188 57483
8189 58467

Executive Orders:
11145 (Continued by EO 13446) 56175
11183 (Continued by EO 13446) 56175
11287 (Continued by EO 13446) 56175
12131 (Continued by EO 13446) 56175
12196 (Continued by EO 13446) 56175
12216 (Continued by EO 13446) 56175
12367 (Continued by EO 13446) 56175
12382 (Continued by EO 13446) 56175
12473 (See EO 13447) 56179
12905 (Continued by EO 13446) 56175
12994 (Amended by EO 13446) 56175
13226 (Continued by EO 13446) 56175
13231 (Continued by EO 13446) 56175
13237 (Continued by EO 13446) 56175
13256 (Continued by EO 13446) 56175
13262 (See EO 13447) 56179
13265 (Continued by EO 13446) 56175
13270 (Continued by EO 13446) 56175
13369 (Revoked by EO 13446) 56175
13379 (See EO 13446) 56175
13385 (Superseded in part by EO 13446) 56175
13386 (See EO 13446) 56175
13445 56165
13446 56175
13447 56179

Administrative Orders:
Memorandums:
Memorandum of September 28, 2007 56871
Presidential Determinations:
No. 2007-34 of September 28, 2007 56873
No. 2007-35 of September 28, 2007 56875

5 CFR

894 58243
1201 56883
1210 56883
1215 56883
1830 56617
2634 56241
2638 56241

Proposed Rules:
352 56019
630 58263

7 CFR

28 56242
301 57195
924 58003
984 57839

Proposed Rules:
6 56677
Ch. VIII 56945
962 56678

8 CFR

103 56832
204 56832
213a 56832
299 56832
322 56832

9 CFR

93 58375
94 58375
95 58375
96 58375

10 CFR

2 57416
20 55864
30 55864
31 55864
32 55864
33 55864
35 55864
50 ..... 55864, 57416
51 57416
52 57416
61 55864
62 55864
72 55864

100.....57416
110.....55864
150.....55864
170.....55864
171.....55864
431.....58190
Proposed Rules:
50.....56275
52.....56287
430.....57254

11 CFR

113.....56245
Proposed Rules:
100.....58028
104.....58028
114.....58028

12 CFR

201.....56889
204.....55655
218.....56514
701.....56247
711.....58248
Proposed Rules:
233.....56680

13 CFR

Proposed Rules:
124.....57889

14 CFR

25.....57842, 57844
39 .....55657, 56254, 56256, 56258, 56262, 56618, 56890, 56891, 57195, 57848, 57850, 57854, 58005, 58007
71.....57485, 57486
91.....57196
95.....56009
97.....56266, 56894
119.....57196
121.....57196
135.....57196
Proposed Rules:
39 .....56700, 56945, 57502, 57890, 57892, 57894, 57896, 58028, 58267
71.....57898
91.....56947

15 CFR

19.....57198
21.....57198
22.....57198
748.....56010

17 CFR

240.....56514, 56562
247.....56514

18 CFR

Proposed Rules:
410.....57255
806.....55711
808.....55711

21 CFR

516.....57199
522.....56896
556.....56896, 57199
558.....56896
Proposed Rules:
870.....56702
1314.....55712

22 CFR

171.....57857

24 CFR

203.....56002, 56156
Proposed Rules:
5.....58448

26 CFR

1 .....56619, 57487, 58375
602.....58375
Proposed Rules:
1.....57503
301.....56704

28 CFR

Proposed Rules:
16.....56704

29 CFR

4022.....58249
4044.....58249

30 CFR

926.....57822
938.....56619
Proposed Rules:
250.....56442
253.....56442
254.....56442
256.....56442
780.....57504
784.....57504
816.....57504
817.....57504

31 CFR

Proposed Rules:
132.....56680
800.....57900

32 CFR

213.....56011
752.....56267
Proposed Rules:
212.....56021

33 CFR

117 .....56013, 56898, 57487, 57858, 58250
165 .....56014, 56898, 57200, 57858, 57861, 57863
Proposed Rules:
110.....57901
117.....56025, 57904
165.....56308, 56972
169.....56600

36 CFR

Proposed Rules:
Ch. I.....58030

37 CFR

1.....57863
Proposed Rules:
381.....57101

38 CFR

14.....58009
Proposed Rules:
5.....56136

39 CFR

111.....56901, 57488
601.....58251
Proposed Rules:
111 .....57505, 57506, 57507

40 CFR

9.....56903
51.....55657
52 .....55659, 55664, 55666, 56268, 56623, 56911, 56914, 57202, 57207, 57209, 57864, 58013, 58016
59.....57215
81.....57207
82.....56628
97 .....55657, 55666, 56914, 57209
141.....57782
142.....57782
180.....57489, 57492
721.....56903, 57222
750.....57235
761.....57235
Proposed Rules:
50.....58030
51.....55717
52 .....55723, 56312, 56706, 56707, 56974, 56975, 57257, 57907, 58031
81.....56312
112.....58378
180.....56325
271.....57258

42 CFR

411.....57634
412.....57634
413.....57634
418.....55672
489.....57634
1001.....56632
Proposed Rules:
71.....55729

44 CFR

64.....58020
65.....57241
67.....56920, 57245
206.....57869
207.....57869
Proposed Rules:
67.....56975

46 CFR

515.....56272

47 CFR

1.....56015
12.....57879
22.....56015
24.....56015
27.....56015
53.....58021
64.....58021
76.....56645
90 .....56015, 56923, 57888
101.....55673

48 CFR

Proposed Rules:
1516.....56708
1533.....56708
1552.....56708

49 CFR

105.....55678
106.....55678
107.....55678
110.....55678
130.....55678
171.....55678
172.....55678
173.....55678
174.....55678
175.....55678
176.....55678
178.....55678
179.....55678
180.....55678
365.....55697
369.....55697
381.....55697
382.....55697
383.....55697
384.....55697
385.....55697
386.....55697
387.....55697
388.....55697
389.....55697
390.....55697
391.....55697
392.....55697
393.....55697
395.....55697
397.....55697
571.....57450
Proposed Rules:
541.....58268
565.....56027
571 .....56713, 57260, 57459

50 CFR

20.....58452
21.....56926
229.....57104
635.....56929, 57104
648 .....55704, 57104, 57500
660 .....55706, 55707, 55708, 55709, 56664, 58258
665.....58259
679 .....56016, 56017, 56273, 56274, 56933, 56934, 57252, 57501, 57888, 58261
697.....56935
Proposed Rules:
17 .....56979, 57273, 57276, 57278, 57511, 57740
92.....58274
216.....58279
622.....58031
635 .....55729, 56036, 56330
648.....58280

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 15, 2007

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish; published 9-14-07

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Delaware; published 9-13-07

Tennessee; published 9-14-07

Hazardous waste program authorizations:

Arkansas; published 8-15-07

Louisiana; published 8-16-07

Superfund program:

National oil and hazardous substances contingency plan priorities; list; published 8-14-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Navy Pier, Chicago, IL; published 10-16-07

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Appalachian monkeyface mussel et al.; published 9-13-07

Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands, and ceded lands; published 10-15-07

LEGAL SERVICES CORPORATION

Aliens; legal assistance restrictions:

Legal assistance to citizens of Micronesia, Marshall Islands, and Palau residing in U.S.; published 9-14-07

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Management official interlocks; threshold change; published 10-15-07

NUCLEAR REGULATORY COMMISSION

Practice and procedure:

Electronic submissions use in agency hearings; published 8-28-07

SECURITIES AND EXCHANGE COMMISSION

Securities:

Persistent fails to deliver in certain equity securities; reduction; amendments (Regulation SHO); published 8-14-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Flightdeck door monitoring and crew discreet alerting systems; published 8-15-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning:

2005 planning rule, implementation; comments due by 10-22-07; published 8-23-07 [FR E7-16378]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Gulf of Alaska groundfish; comments due by 10-25-07; published 10-15-07 [FR 07-05066]

Atlantic coastal fisheries—

American lobster; comments due by 10-22-07; published 9-21-07 [FR E7-18589]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Enhanced access for small business; comments due by 10-22-07; published 8-22-07 [FR 07-04077]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Virginia; comments due by 10-25-07; published 9-25-07 [FR E7-18849]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Pennsylvania; comments due by 10-25-07; published 9-25-07 [FR E7-18844]

Air pollutants, hazardous; national emission standards:

Clay ceramics manufacturing, glass manufacturing, and secondary nonferrous metals processing; comments due by 10-22-07; published 9-20-07 [FR E7-18344]

Electric arc furnace steelmaking facilities; comments due by 10-22-07; published 9-20-07 [FR E7-18343]

Air quality implementation plans; approval and promulgation; various States:

Arkansas; comments due by 10-26-07; published 9-26-07 [FR E7-18966]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

California; comments due by 10-26-07; published 9-20-07 [FR E7-18586]

Air quality implementation plans; approval and promulgation; various States:

Missouri; comments due by 10-26-07; published 9-26-07 [FR E7-18791]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Fipronil; comments due by 10-22-07; published 8-22-07 [FR E7-16621]

Methamidophos, etc.; comments due by 10-26-07; published 9-26-07 [FR E7-18869]

Pyriproxyfen; comments due by 10-22-07; published 8-22-07 [FR E7-16310]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 10-24-07; published 9-24-07 [FR E7-18579]

FARM CREDIT ADMINISTRATION

Farm credit system:

Conservators, receivers, and voluntary liquidations—

Subordinated debt; priority of claims; comments due by 10-26-07; published 9-26-07 [FR E7-18965]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Oregon; comments due by 10-22-07; published 9-13-07 [FR E7-17892]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Enhanced access for small business; comments due by 10-22-07; published 8-22-07 [FR 07-04077]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare and Medicaid:

Hospital participation conditions; laboratory services; comments due by 10-23-07; published 8-24-07 [FR E7-16647]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Dietary supplements and ingredients; identity testing exemption; comments due by 10-24-07; published 9-17-07 [FR E7-18293]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Nawiliwili Harbor, Kauai, HI; comments due by 10-24-07; published 10-3-07 [FR 07-04893]

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Civil aviation security:

Secure Flight program; comments due by 10-22-

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1983/P.L. 110–94

Pesticide Registration Improvement Renewal Act (Oct. 9, 2007; 121 Stat. 1000)

Last List October 3, 2007

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–062–00002–2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
4	(869–062–00004–9)	10.00	[5] Jan. 1, 2007
5 Parts:			
1–699	(869–062–00005–7)	60.00	Jan. 1, 2007
700–1199	(869–062–00006–5)	50.00	Jan. 1, 2007
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–062–00009–0)	44.00	Jan. 1, 2007
27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
53–209	(869–062–00011–1)	37.00	Jan. 1, 2007
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
300–399	(869–062–00013–8)	46.00	Jan. 1, 2007
400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
1200–1599	(869–062–00018–9)	61.00	Jan. 1, 2007
1600–1899	(869–062–00019–7)	64.00	Jan. 1, 2007
1900–1939	(869–062–00020–1)	31.00	Jan. 1, 2007
1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–062–00026–0)	58.00	Jan. 1, 2007
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–062–00029–4)	46.00	Jan. 1, 2007
500–End	(869–066–00030–8)	62.00	Jan. 1, 2007
11	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
1–199	(869–062–00032–4)	34.00	Jan. 1, 2007
200–219	(869–062–00033–2)	37.00	Jan. 1, 2007
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–062–00035–9)	47.00	Jan. 1, 2007
500–599	(869–062–00036–7)	39.00	Jan. 1, 2007
600–899	(869–062–00037–5)	56.00	Jan. 1, 2007
900–End	(869–062–00038–3)	50.00	Jan. 1, 2007
13	(869–062–00039–1)	55.00	Jan. 1, 2007
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–062–00046–4)	60.00	Jan. 1, 2007
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–062–00049–9)	60.00	Jan. 1, 2007
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
1–399	(869–062–00054–5)	62.00	Apr. 1, 2007
400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
1–140	(869–062–00056–1)	61.00	Apr. 1, 2007
141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
200–End	(869–062–00058–8)	31.00	Apr. 1, 2007
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
500–End	(869–062–00061–8)	63.00	Apr. 1, 2007
21 Parts:			
1–99	(869–062–00062–6)	40.00	Apr. 1, 2007
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
500–599	(869–062–00067–7)	47.00	Apr. 1, 2007
600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–062–00069–3)	60.00	Apr. 1, 2007
1300–End	(869–062–00070–7)	25.00	Apr. 1, 2007
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
300–End	(869–062–00072–3)	45.00	Apr. 1, 2007
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–062–00074–0)	60.00	Apr. 1, 2007
200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
500–699	(869–062–00076–6)	30.00	Apr. 1, 2007
700–1699	(869–062–00077–4)	61.00	Apr. 1, 2007
1700–End	(869–062–00078–2)	30.00	Apr. 1, 2007
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–062–00080–4)	49.00	Apr. 1, 2007
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–062–00083–9)	47.00	Apr. 1, 2007
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–062–00085–5)	58.00	Apr. 1, 2007
§§ 1.501–1.640	(869–062–00086–3)	49.00	Apr. 1, 2007
§§ 1.641–1.850	(869–062–00087–1)	61.00	Apr. 1, 2007
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–062–00091–0)	58.00	Apr. 1, 2007
§§ 1.1551–End	(869–062–00092–8)	50.00	Apr. 1, 2007
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[7] Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–062–00101–1)	64.00	Apr. 1, 2007
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[9] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[9] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–062–00162–2)	39.00	[9] July 1, 2007
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–062–00166–5)	56.00	[9] July 1, 2007
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

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